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DIVISION OF REVIEW

NRA POLICIES, STANDARDS AND CODE PROVISIONS ON BASIC WEEKLY HOURS OF WORK

By

Solomon Barkin

(A Section of Part B: Control of Hours and Reemployment)

WORK MATERIALS NO. 45
THE LABOR PROGRAM UNDER THE NRA

Work Materials No. 45 falls into the following parts:

Part A: Introduction
Part B: Control of Hours and Reemployment
Part C: Control of Wages
Part D: Control of Other Conditions of Employment
Part E: Section 7(a) of the Recovery Act

LABOR STUDIES SECTION
MARCH, 1936

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F O R E W O R D

This study of "NRA Policies, Standards and Code Provisions on Basic Weekly Hours of Work" was prepared by Mr. Solomon Barkin of the Labor Studies Section. It is one of three contemplated studies on NRA handling of hours, the others being one on Seasonal and Peak Tolerance and one on Occupational Exemptions from Hour Provisions. The latter two could not be completed because of reductions made in personnel.

This study describes the development of policies and code provisions with respect to the basic hours of work for employees. Special attention is given to the negotiations in connection with the formation of codes and to the effect of these negotiations upon code provisions.

The subject of this study is of course controversial. The author was a member of the staff of the Labor Advisory Board throughout the period covered by NRA. Other participants in the NRA experience might have presented a different account. It is assumed, however, that on such a problem the personal interpretation of an active participant in policy formation is of distinct value. The author would be the first to point out that the opinions and conclusions reached are his own and not official utterances.

Part B of Work Materials No. 35 deals with the content of the code provisions in the codes. The data supplement this present report.

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall,
Director, Division of Review

March 26, 1936

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SUMMARY

The NIRA sought to achieve recovery, reform and stabilization in industry and trade. Prior to its passage a thirty hour bill was considered in Congress and passed in the Senate. Management opposed this bill because it was too rigid and set up governmental regulation of industry. It preferred a procedure whereby employers would develop their own terms of employment and administer them. The NIRA was supported by management because it believed that the Act offered this instrumentality.

The NIRA was directed immediately at increasing employment in industry and trade through the shortening of hours and the stimulation of industrial recovery. It set up a thirty hour week for public works projects. As for the method of determining the hours' provisions, the Act provided two procedures: those prescribed by Sections 7(b) and 3(a).

The National Recovery Administration reaffirmed the policy declared at the time of the legislative consideration of the Act. In carrying out the policy, however, it suggested as a standard for the determination of hours of employment, reemployment of "employees normally attached to the particular industry." As for administrative procedure it selected Section 3(a) providing for voluntary codes submitted by employers as the means of developing the labor provisions to effect the purposes of Title I.

More direct efforts to set standards led the Administrator to suggest the 32 hour week. In the Cotton Textile Industry the first definitive description of standards was made. Each industry was to be considered individually and asked to reemploy sufficient persons to bring its total employment to the 1929 level. The forty-hour week in the Cotton Textile Code was specifically designated as an exceptional case which was no precedent for future codes.

To secure immediate results, the PRA was adopted. It established a basic 35-hour week for productive employees, and a 40-hour week for non-productive employees. In contrast with the variable standard previously announced for codes, it established a uniform set of hours.

In contrast to the uniformity of basic hours set up in the PRA, the application of the 1929 employment basis to industry would have resulted in a wide range of basic hours generally below forty. Most of the early proposed codes did not follow the 1929 employment objective. They adopted the Cotton Textile Code hours as a norm, and established long seasonal and peak tolerances, and numerous occupational exemptions.

The conflict between these two approaches was first resolved in the development of PRA substitutions. The principal substitutions dealt with the hours provisions of the PRA. The hours provision of the substitutions generally established a basic 40-hour week instead of a 35-hour week. Seasonal and peak tolerances in 200 of the substitutions and occupational exemptions modified the restrictions of the basic work week and permitted a much longer actual maximum work week, usually 48 hours.

Since Administration policy called for a careful study of each industry to develop a formula of hours likely to effect reemployment to the 1929 level, and the industries typically presented codes with a 40-hour basic week code negotiations and revisions were of great importance to reconcile the two. The Deputy Administrator carried the major burden of this task. Upon his alertness, clearness and understanding of these negotiations the results were dependent. He was faced by the fact that codes were considered voluntary, but as a bargaining weapon he possessed the right to grant or disapprove trade practices desired by the industry. He could also deny the industry a code if the terms were inadequate. Most Deputy Administrators did not undertake vigorously the revision of proposed codes. The most significant group pressing for the reduction of hours were the labor advisers. To the extent to which they actively participated in the negotiations and had the sympathetic assistance of the administrative officials, they were successful in raising the terms of employment in the codes.

Only in nine of the first one-hundred approved codes were basic weekly hours reduced below those originally proposed by Management. Two of these reductions resulted from the direct efforts of the Administration, four were effected by the Administration and labor representatives or advisers, and three eventually through collective bargaining. Seven of these codes established basic hours under forty (40) although most of them had originally proposed forty (40) hour codes. Substantial reductions in hours were made. Six of these downward revisions were made in codes included among the first twenty approved. In achieving these reductions union strength accounted for three; special bargaining advantage such as public funds and trade practices; for three; precedent for one, and pressure for greater reemployment, for two.

Six of the first one hundred approved codes had their basic hours increased over those originally proposed by management. The establishment of a forty hour norm for metal industries accounted for the increase in hours of four codes, while the need for assuring codification explains the increase in the other two. All but one of these established a forty hour week and represented an increase from original proposals of 35 and 36 hours. In the sixth, the retail trade, hours were increased from 40 to a schedule ranging from 40 through 48.

In 85 of the first one hundred codes the approved basic hours were not different from those first proposed. No changes were made in the basic hours of these codes for various reasons. Only a small proportion actually measured up to the goal of reemploying a total equal to the 1929 level. The others were approved because it was believed that the industries were financially unable to carry the cost of shorter hours or could not be expected to reduce hours since reemployment in the industry must result from general industrial revival rather than from the shortening of weekly working hours. The hours in other codes were not modified since they followed the patterns of prevailing approved codes. The force of precedent became increasingly important as the number of approved codes increased. The original standards for the determination of the basic work week were qualified by new principles. Uniformity of the basic work week was established. Eighty-three (83) of the first one hundred approved codes established a forty hour week, only eleven (11) established shorter hours than forty, and six (6) longer than forty hours.

The precedent of this experience becmae established as new policy. The forty hour week became the typical work week. Codes with less than forty hours were considered unusual and needed special justification. The influence of the goal of 1929 employment was markedly weakened. The codes reflected the new approach. Four hundred and ninety (490) codes adopted the forty hour week. The number with a basic work week of more than forty was forty-two, and those with less than forty was forty-one.

In the formulation of codes which established a longer than forty hour basic work week precedent was largely determining. Codes were early approved with longer than forty hours and kindred and subsidiary industries followed with the same basic hours. Several additional industries had longer hours because of the alleged extraordinary nature of their products, such as perishability, or their alleged extraordinary seasonality.

Several factors asserted themselves in the formulation of codes with less than forty hours. The most significant was organized labor, particularly in the needle trades. The early approval of codes with 35 and 36 hours per week explains the adoption of a similar work week in a number of later codes. In a substantial number of cases, effective use of knowledge of the industry and the services of the labor adviser account for the shorter weekly hours. Management recommended the establishment of a 35 or 36 hour week in a number of instances.

Many officials within NRA desired to shorten hours to effect a greater amount of reemployment. Efforts to this end were made at the February and March, 1934 meetings. The President and the Administrator appealed to management to take the necessary steps, but it refused. Reduction of hours only in industries in a position to effect such reductions was recommended but it proved impractical. The Labor Advisory Board made several efforts to secure the general reduction in hours. But its efforts were in vain. The January, 1935 hearings proved to be only a sounding board for the appeal for shorter hours. Reductions were effected only in three industries, bituminous coal, cotton garment and millinery. Organized labor in each of these groups was largely responsible for this action.

CHAPTER I.

INTRODUCTION

The National Industrial Recovery Act was one of a series of measures to meet the depression following the prosperity peak in 1929. NIRA was an effort to weld together measures for recovery, reform and stabilization. Revival of industrial activity was its initial objective. This goal was to be attained by the establishment under government guidance and supervision of higher standards of employment, for labor and fair trade practices to govern business relations. United action of labor and management was to be the abse for industrial relations, and properly supervised and reviewed representative action by industry was to rehabilitate business relations. The collection of information for public action was to come with "industrial planning". Stabilization was deemed necessary to stop the downward spiral of prices, production, employment, wages and standard of living.

The most pressing goal of this Act was to get millions of unemployed back to work. In this movement for reemployment, the reduction of hours of work of employees was basic. It was the principal method of assuring quick reemployment.

This study is concerned with the policy and practice in NRA with respect to the basic hours of work in codes. As such this study does not discuss in detail the policy on seasonal and peak tolerances or occupational exemptions from the hours provisions. Nor is this an examination of administrative experience under the code provisions, or a survey of the effects upon reemployment. It is not an analysis of the economic validity of the hours program. It is concerned with the development of policy, standards and forces determining the hours provisions in codes.

CHAPTER II.

THIRTY HOUR BILL.

The NRA and the policy with respect to hours finds its immediate origins in the events of 1932. After three years of depression and increasing unemployment the Federal Government undertook the task of directing industrial recovery and relief. In 1932, the Emergency Relief and Construction Act was passed setting aside 300 million dollars for loans to states, counties and cities upon application of the state government, and for individual relief; and 1,500 million dollars for loans to government agencies and building corporations for self-liquidating projects to provide unemployment relief upon the condition that a thirty hour week be observed on such projects. Private industry also cooperated in promoting a share-the-work movement in which an effort was made to induce employers, particularly retailers, wholesalers, banks and public utilities, to create more jobs by reducing the working hours of employees. However, this movement failed to achieve the desired objectives since voluntary co-operation could not be obtained from the employers to keep down working hours and hire more employees. Most firms were willing to divide work rather than lay persons off, but were not disposed to reduce hours in order to hire additional persons. (*)

These efforts proved only effective in a most limited manner. They covered only small segments of the problem. As a result, organized labor, liberal Senators and Representatives, and many outstanding industrialists sponsored direct legislation which they hoped would more effectively meet the problem of returning the unemployed to work. The Black Thirty Hour Bill was the most significant of these pieces of legislation. This bill after long consideration in the Senate was finally approved on April 6, 1933 by a vote of 53 to 30.(**) Various efforts to amend the Thirty Hour Bill to increase the hours to 36 per week and 8 per day failed. (***). Finally the Bill was reapproved by the Senate on April 17, 1933 by a vote of 52 to 31. (****) The bill as it left the Senate specified that goods could enter into interstate commerce if not produced under conditions where the employees were "permitted to work more than six hours in any one day." Exemption from this regulation could be issued by the Secretary of Labor. (*****)

In the House of Representatives the bill was subject to a number of amendments largely at first at the request of the Secretary of Labor, who recommended greater flexibility of hours. She proposed a provision permitting employees to work forty hours a week and eight hours a day for ten weeks in a calendar year "if an extraordinary need in any plant or industry can only be met by utilizing a longer work day or work week and if permission is granted by an Hours-of-Work Board." (******) In the final revised draft of the Connery Bill of May 10, 1933, the thirty hour week and the six hour day provision was retained. However, it contained

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(*) S. Slichter, Employment Conditions - The American Year Book Record for the year 1932, N.Y. 1933, p. 575

(**) Congressional Record, April 6, 1933, Vol. 77, Part 2, p. 1350

(***) Ibid. p. 1333 (****) Ibid, p. 1812. (*****) 73rd Congress 1st Session, S. 158.

(******) For copy of proposed bill see: United Mine Workers Journal, May 1, 1933, V. 44, No. 9, p. 9

the exception "that upon the submission of satisfactory proof of the existence of special conditions making it necessary for certain workers to work more time than herein provided" the Board may grant an exemption.(*)

The thirty hour bill had the endorsement of organized labor and of many representatives of industry. In the hearings on the bill organized labor presented testimony to support its position. The American Federation of Labor had declared for the thirty hour week at its 1932 convention; and at the hearings it averred that it is a question of either a dole, a universal strike or legislative action, such as contemplated by the Black Bill. (**) Representatives of constituent unions also testified in favor of the bill. Similar action was concurrently urged by organized labor in a number of state legislatures. Individual employers, particularly in the textile industry, appeared before the Congressional Committees in favor of the bill.

During consideration of the Thirty Hour Bill there developed the movement among employers for the regulation of hours on a longer work week basis than that proposed in the Black-Connery Bill. In April, 1933, the United States Chamber of Commerce, through its Special Committee on Working Periods in Industry, declared that "during continuance of substantial unemployment, the hours of work should be restricted to not more than forty a week." (***)

This sentiment was reechoed during the hearings on the Thirty Hour Week Bill before the House Committee on Labor on April 25-28 and May 1-5, 1933. One recommendation to the Committee proposed an average of thirty-two hours per week over a six months period with a forty-eight hour weekly maximum and an eight hour day. (****) Other employers testified or furnished evidence in favor of restricted hours, though they generally objected to the thirty hour week and favored a forty hours' maximum work week. (*****)

(*) 73rd Congress, 1st Session, S.158, Report No. 124, House Calendar 49.
(**) Thirty Hour Work Week, Hearings before a Subcommittee of the Committee of the Judiciary United States Senate, 72nd Congress, 2nd Session on S. 526, January 5-19, 1933, pp. 1-22.
(***) Chamber of Commerce of the United States, "Working Periods in Industry," Report of Special Committee, Washington, D. C. April 1933.
(****) 73rd Congress, 1st Session, Hearings before the Committee on Labor, House of Representatives on S. 158 and HR 4557 and Proposals offered by the Secretary of Labor, April 25-28, May 1-5, 1933, (Washington, 1933) (Statement by Gerard Swope), p. 92.
(*****) Some of the testimony was as follows:

1. Industrial Management Council of Rochester, N. Y. (Letter, April 26, 1933):

"Most would favor a 40-hour week with flexibility to take care of inevitable emergencies without limitation as to hours per day. The largest section of them would approve of an 8-hour day. Several would not oppose a 36-hour week. One would not object to even a shorter week, although against

(*****) Note continued.

against a 30-hour week. Our largest company, the Eastman Kodak Co., says that due to the highly techincal character of its business, its employees cannot on an average be placed on less than a 55-hour week" (ibid., p. 169).

2. Mystic Iron Works and Other Iron Companies:

"I would hope to see a 40-hour week provided in the case of manufacturers operating 24 hours per day" (ibid., p. 184).

3. Mr. Lumbard, Chairman of the Board of Tanners' Council of America:

"I was in favor of the principle of a shorter working week (1).....of around 40 to 45 hours." (2)

(1) ibid., p. 282
(2) ibid., p. 293

4. William Goldman, Representing the Clothing Manufacturers' Research Board, New York City:

"There is a considerable division in the clothing industry with regard to what should be about this bill. The Rochester market, for example, has recommended the 36-hour week, with 16 weeks a year in which they would be permitted to work 40 hours. My own feeling is that we should adopt the 40 hour week.....The Rochester market has looked at it more largely from the standpoint of the clothing industry, which works 44 hours a week, whereas we must consider the vast number of industries which we have in this country that work 50 hours and upward" (ibid., p.p. 313-314)

5. Charles B. Rockewell, Jr., Collins and Aikman Corporation:

"Mr. Ramspeck: Your chief contention is about the proposal we have under consideration - that it be 32 hours and permitting 8 hours a day ....

"Mr. Rockwell: That and insistence that a minimum wage be considered....." (ibid., p. 336).

6. B. P. Disque, President, Anthracite Institute:

"I agree entirely that Mr. Swope's suggestions that the maximum working hours in any 26 week period shall average 32 hours per week" (ibid., p. 394)

7. F. W. Hobbs, President, National Association of Wool Manufacturers:

"I am in favor of a national maximum hours-of-labor law of some sort. (1), If we assume a 2 year limit-----(add that) when it expired that a national 48-hour bill, with the

(*****) Note continued.

elimination of women and minors from night work, would then be effective" (2).

(1) ibid., p. 291
(2) ibid., p. 487

8. E. N. Hood, Treasurer, Pequot Mills, Salem, Mass.

"I wish to go on record as being in favor of some Federal regulation of the hours of labor (1). My suggestion is that with a 48-hour week there would be a uniform basis for the entire industry.....(2) .....I mentioned 48 hours in my brief but there is no particular magic in 48 hours. I would be willing to concede something below that" (3)

(1) ibid., p. 496
(2) ibid., p. 498
(3) ibid., p. 499

9. Walter Teagle, Standard Oil Company:

"Most business would, I believe, prefer 32 hours a week, no more than 8 hours to be worked per day, or a total of 832 hours in a 6 months' period, with a provision allowing employees in times of stress to work up to 48 hours a week" (ibid., p. 511).

10. H. D. Chency, Chairman of the Legislative Committee of the Silk Association of America: (Reads resolution of Association):

"The Board of Managers of the Silk Association of America, Inc., favors a federal law, during the existing emergency, forbidding the employment of any person in all industry more than 30 hours per week" (ibid., p. 528)

11. C. F. H. Johnson, President of the Botany Mills:

"I would say that possibly 40 hours a week would accomplish the result the Committee is trying to reach" (ibid., p. 535)

12. St. Paul Association of Commerce:

"It appears to us that 40 hours and 5 days would be a better basis" (ibid., 575)

13. S. B. Botsford, Vice President of the Buffalo Chamber of Commerce:

"Many of our manufacturers favor 36 hours rather than 30 hours if any arbitrary limitation is to be made"(ibid., p. 606).

(*****) Note continued.

14. Phillips Baker Rubber Company, Rhode Island:

> "We urge national 30-hour productive-worker week applicable intrastate and interstate limited to 6 hours daily" (ibid., p. 645).

15. R. G. Knowland, Bigelow Sanford Carpet Company:

> "If a single standard maximum working week were adopted arbitrarily for all industries, it would probably have to be between 44 and 48 hours" (ibid., 650)

16. M. D. Harding, Representing the Institute of American Meat Packers:

> "If we had a 40-hour week, with elasticity so that we could go to 54- because, as I have told you, our capacities are not sufficient for us to continue week after week on a 40-hour week, but I will say further that a 40-hour week in our industry, with permission to go to 54 hours during emergencies, would mean that more men would go to work in our industry, because we would hold closer to the 40 hours" (ibid., 661).

17. H. Kendall, President, Kendall Company, Cotton Textile Manufacturers:

> "First, the President should seek immediate legislation to regulate hours of work for men and women on the principle of the 5-day week and the shorter working day....We have no objection to the 30-hour principle, as such, but we believe that there should be some flexibility in the number of weekly hours allowed downward as well as upward to meet the needs of particular industries." (ibid., p. 736).

18. C. E. Stuart, President Engineering Firm, Stuart, James & Cook, New York City:

> "First. A control of hours of labor, provided that ample elasticity is permitted under this feature of control --based not on any arbitrary standards but on the needs of each industry and keyed to the requirements of our national economy" (ibid., p. 753).

19. Chamber of Commerce, Newark, New Jersey:

> "In the event that it is decided to pass a bill restricting the hours of labor on merchandise moving in interstate commerce, it is urged that such bill be amended to (1), do away with any limitation on the hours of labor per day.... (2), if the bill arbitrarily determines the work hours per week, the limitation should not be less than 36" (ibid., p. 763).

Following these hearings the cotton textile industry endorsed the principle of the forty-hour week for its own plants. (*)

These and other leaders of industry appeared to recognize the need for a restriction of hours but recommended that development and administration of the shorter hours' provision be placed in the hands of trade associations. (**)

They suggested the substitution of individual industry regulations for the "statutory method" of hours' regulation prescribed by the Thirty Hour Bill. They deemed the tolerances in hours suggested by the Secretary of Labor to be inadequate and too rigid. In their place the United States Chamber of Commerce proposed that the trade associations draw up agreements among the members of an individual industry concerning maximum hours of labor. This procedure, they assured, "would bring about all the benefits contemplated by the Thirty Hour Bill."(***) This method in addition would "secure the necessary flexibility in standards of hours called for by each industry. (****)

Interest and co-operation in the movement for the reduction of hours to meet the emergency were evident, but management control of the hours provisions and of the administrative machinery for their regulation was insisted upon as an alternative to legislation. Reductions in hours were not to be rigid. Each industry was to be permitted to write terms dictated by its individual needs instead of following a general statute and applying for exemptions for exceptional cases.

(*****) Note continued from preceding page.

20. Alfred P. Sloan, President, General Motors Corporation, representing the National Automobile Chamber of Commerce, New York City:

> "So my recommendation is that we be permitted to work a maximum of 6 days for 8 hours, or 48 hours; providing however, that the average over the year is not greater than a total of 30 hours per week; although I would like to have that made 32 hours, because in that way industry can work 4 days of 8 hours each, which provides a little more flexibility from the standpoint of the weekly set-up" (ibid., p. 772)

(*) New York Times, May 11, 1933.
(**) Hearings on the Thirty Hour Bill, op. cit., page 92, Mr. Gerard Swope.
(***) Ibid., p. 197.
(****) Ibid., p. 228.

Chapter III.

THE NATIONAL INDUSTRIAL RECOVERY ACT

It was, in part, to meet industry's demands on these particular issues that the NIRA was formulated as a substitute for the Black-Connery Bill and other current proposals. The NIRA appeared as a compromise measure among the various proposals for industrial recovery. In fact, many different groups had a share in the drafting of the bill. (*) Practically every shade of current, vocal opinion participated to a greater or lesser degree in formulation of the bill.

In the first discussions of the bill its presentation as a substitute for the Black Thirty-Hour Bill in order to provide greater flexibility in hours was emphasized. (**) The business press immediately so interpreted the new proposal. It was characterized as a means of legalizing "trade agreements, more flexible with different hours in different industries." (***) This aspect, the bill, as it went through its many redrafts, came increasingly to resemble. While an early draft set up a licensing system wherein the license set forth the terms of operation, (****) that section was subsequently modified to provide a voluntary system of codes proposed by a representative management group within each industry. This later draft enunciated the concept of varying hours among different industries which was in basic opposition to the Black-Connery Bill. The provisions were summarized by the newspapers in the following manner:

> "Flexible hours will be provided among the various industries, but the differential between the 'maximum hours industries' and the 'minimum hours industries', it was said, will not be so large as to give one an advantage over the other" (*****)

(*) Including a small group centering about Professor Moley; a somewhat larger group headed by Senator Robert Wagner; a third group representing the Agriculture Department, including Rexford A. Tugwell and Jerome Frank; the Department of Commerce in the person of John Dickinson; and other interested groups, such as the United States Chamber of Commerce and the National Association of Manufacturers and the American Federation of Labor; representatives of the banking interests and proponents of public works measures, of the shorter work week and of industrial self-government. (New York Times, May 3, 1933).

(**) New York Times, April 15, 1933.

(***) The Kiplinger Letter, April 15, 1933.

(****) Presented by Professor Moley; see New York Times, April 29, 1933.

(*****) Ibid.

The bill as finally proposed was divided into two parts: Title I was entitled "Industrial Recovery" and Title II was called "Public Works and Construction Projects." (*) The declared purpose of the bill was defined by the President in his message to Congress. He declared that Congress should provide "for the machinery necessary for a great co-operative movement throughout industry in order to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week and to prevent unfair competition and disastrous competition". (**)

The bill and the Act as finally approved contained no explicit standards. The Act set forth objectives and provided alternative methods of procedure. It defined the policy of the Act among other things to be to "reduce and relieve unemployment, (and) to improve standards of labor." These goals were apparently, though not explicitly, to be achieved by the establishment of "maximum hours of labor" (Section 7 (a). No specific definition concerning maximum hours' regulation or its relation to reduction of unemployment was contained in the bill. Consequently the place of reduction of hours in the program of industrial recovery heralded by the NIRA appeared in the circumstances and ideas conditioning passage of the bill rather than in its own final, definitive statements.

I. Purpose of the Bill in Relation to Regulation of Hours

The President, in his message to Congress had explicitly construed the purpose to be "to obtain wide reemployment (and) to shorten the working week." Senator Wagner had introduced the bill in the Senate with the declaration that its "principal and immediate object is to open opportunities for the employment of several million men and women and thus distribute purchasing power which will be effective in starting again the wheels of industry." In the specific codes presented by the employers, Senator Wagner had indicated that the latter "must undertake to reduce the hours of labor to that number which the President finds will be most helpful in increasing employment in industry." Specific standards of working hours were omitted from the bill in the light of the prevailing theory among the bill's sponsors that such decisions were the proper sphere of the Administrators of the Act so that "hours of labor . . . may be accommodated to the varying needs in different industries."(***) The bill was to provide the machinery for determination of hours consistent with the intent of the Act, but no specific formula or set of detailed guides was included. The major objectives were loosely defined; the types of administrative machineries were suggested; but the precise moves as to code content were to be left to administrative machineries were suggested; but the precise moves as to code content were to be left to administrative discretion. No specific recommendation for a definitive set of hours was heard from the Congressional sponsors of the bill.

(*) 73rd Congress, 1st Session, H.R. 5664. Introduced on May 17, 1933 by Mr. Doughton in the House of Representatives.
(**) Congressional Record, May 17, 1933, V.77, Part 4, p. 3549.
(***) Congressional Record, June 7, 1933, V.47, Part 5, p. 5154.

In the absence of such recommendation, the discussions on the bill best defined the objectives which governed and impressed its supporters. The major objective was reemployment anticipated as resulting from the shortening of hours. Among other reasons given for shorter hours was the provision of "some leisure through reasonable hours of labor." It was also argued that the industrial chaos produced by the "recalcitrant 10 or 15 per cent of the industry" resulted from "cutthroat wages and the long hours." In consequence, elimination of long hours was expected not only to lead to the absorption of "a great deal of our unemployment" but to set up the very terms of fair competition for industry itself.(*)

II. Administrative Provisions

Two different sections of Title I outlined possible procedures to be used in developing the standards. In the first place, Section 7 in subdivision (b), declared:

> "The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of Section 3."

Its significance for determination of hours of labor was explained by Representative Kelly of Pennsylvania in the debate on the floor of the House of Representatives on May 25, 1933. He declared:

> "Many plans have been offered for dealing with the problem of hours of labor. The Black Bill provided for a 30-hour week. There have been suggestions for the 36-hour week and the 40-hour week. The plan under this bill is not to fix a rigid schedule for every industry alike but to permit the employers and employees in each industry to work out the hours of labor best suited to the exact conditions. It is believed that collective action will result in fair adjustment of working hours and balance them with production. . . It is the purpose to encourage the settlement of the vitally important questions of hours, wages and working conditions by mutual agreements between organizations of employers and employees. The responsibility is put upon those who should have it. When the agreement is made and approved it will have all the sanctions of

(*) Congressional Record, June 8, 1933, V. 47, Part 6, p. 5238.

> codes of fair competition. . . If in any trade or industry there is neglect or refusal on the part of one or both parties to make mutual agreements, covering these important questions, power is given the President through his agencies to investigate labor practices, wages, hours of labor and working conditions and prescribe fair standards." (*)

Before the House Ways and Means Committee, Senator Wagner also stated that -

> "The bill makes the following provisions respecting the determination of hours, wages, and labor standards:
>
> "A. Where the right of collective bargaining prevails employers and employees are given the first opportunity to agree upon maximum hours, minimum rates of pay, and other working conditions. That is, those mutual agreements can only be recognized where these rights of labor to collectively bargain prevail. When such agreement is approved by the President, it acquires the character of a code.
>
> "B. Where no agreement can be reached or has been approved, the President is authorized to investigate and to prescribe by way of a limited code or as part of a general code, the standards of hours, wages and conditions." (**)

Section 7 (b) of the Act, however, was not proposed as the sole nor the preferred method for determining labor conditions or establishing maximum hours of labor.

The NIRA provided another technique for developing standards, primarily intended for trade practice regulation. Section 3 (a), designed in early drafts of the law to implement the provision for suspension of the anti-trust law in cases where codes of fair competition

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(*) Congressional Record, May 25, 1933, V. 77, Part 4, p. 4218

(**) National Industrial Recovery House Ways and Means Committee Hearing on S.1712 and H.R.5755, 73rd Congress, 1st Session. pg. 95.

were approved (*), permitted trade or industrial associations or groups to present codes under the conditions of the Act. This method, during the course of the Congressional hearings, became increasingly identified by Administration representatives with the procedure for developing labor standards as well. No provision in Section 3 prescribed this procedure. However, Mr. Richberg, before the Senate Committee on Finance, definitely confirmed such interpretation when he declared that:

> He had "this vision of it, and that is that either labor will participate in the drawing up of such codes, or that labor will participate in the consideration as to whether such codes are fair, and perhaps management will regard it as desirable to have labor participate at the first stage rather than the second . . . (But) unfortunately there is such an attitude toward labor in many industries that perhaps the easiest practical method is (for the employers) to work out a labor correction code which is a code of what is unfair rather than original labor participation."(**)

(*) Section 3 (a) of the Act reads:

> "Upon the application to the President by one of more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: PROVIDED, That such code or codes shall not permit monopolies or monopolistic practices: PROVIDED FURTHER, That where such code or codes affect the service and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared."

(**) National Industrial Recovery Senate Hearings Report of the Committee on Finance on S. 1712 and H.R. 5755, 73rd Congress, 1st Session. pg. 23.

While organized labor believed that the procedure under Section 7 (b) was to govern the administrative routine within the NRA, leaders of business considered Section 3 (a) as the prevailing procedure. Organized labor declared that Section 7 (b) in -

> "plain simple language . . . means that employers and employees will be accorded the fullest opportunities to negotiate wage scales and conditions of employment. In fact a simple sound interpretation of this section means that the government expects employers and employees to work out wage agreements through collective bargaining." (*)

The employers, on the other hand, proceeded on the theory that the entire NRA codification process would be handled largely through Section 3. In fact, the National Association of Manufacturers prepared a guiding statement outlining the contents of the code, including "wage, hours, conditions." (**)

Other contemporaneous publications and statements showed that this position was widely held by industry. Many trade associations and industrial groups after consultation with General Johnson and his associates prepared codes for submission to the Administration in the last week of May and early June, 1933 containing provisions on hours, wages and working conditions.

The Act left decision as to the procedure and the criteria to the Administration. There were no restrictions or precise instructions. Either of the two methods could be used. Any combination or adjustment within the delimited areas would be consistent with the law.

This fact was of enormous significance to determination of the hours formulae in the codes. The collective bargaining procedure, if established, would have introduced a revolutionary change. Labor as a group would have become a direct participant in the determination of conditions of employment. Section 7 (a), providing for the right of collective bargaining, would have set the conditions for the formulation of the basic national codes. The proposals submitted would have been the result of joint action by labor and industry; the government acting as supervisor. On the contrary,, rejection of this method in favor of Section 3 (a), would reduce labor's part to a relatively minor one, since the union would then have participated expost facto as a critic rather than as a party to the proposal.

III. <u>The Thirty Hour Week Provision in the Public Works Title</u>

While the hours pattern for private industry was only vaguely outlined, the regulations for the public works were definitely expressed in the Act. It represented a direct continuation of the provisions of

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(*) American Federationist,/Vol. 40, p. 693
July 1933

(**) National Association of Manufacturers, "The National Industrial Recovery Act" prepared by John C. Gall, Associate Counsel, and Noel Sargent, Economist. (May 23, 1933).

Emergency Relief and Construction Act of 1932 and a concession to the principle of the thirty-hour week in the Black-Connery Bill. It specifically provided in Section 206 (a) that "so far as practicable and feasible, no individual directly employed on such project shall be permitted to work more than thirty hours in any one week."

CHAPTER IV.

FORMULATION OF POLICY AND DETERMINATION OF ADMINISTRATIVE MACHINERY

I. Formulation of Policy

After the passage and approval of the Act, administrative developments determined the course of experience under the NIRA. In the statements bearing on development of policy on the hours, the objectives expressed in the discussions before passage of the Act were not appreciably changed by the Administrative Agencies. The President on signing the Act on June 16, 1933, declared that the Act proposed to "our industry a great spontaneous cooperation to put millions of men back to their regular jobs this summer. This idea is simply for employers to hire more men to do the existing work by reducing the work hours of each man's week and at the same time paying a living wage for the shorter week." (*) Reduction of hours was accepted as the chief measure for reemployment. Neither the basic work week to be adopted in the codes, however, nor the standards to govern the Administration were outlined in that statement.

II. Statement of Standards

The President's declaration was supplemented by more detailed procedure outlined by the National Industrial Recovery Board in NRA Bulletin No. 2 of June 16, 1933. This document stated the purpose of the entire Act as being "to effect an immediate reduction of unemployment and increase of mass purchasing power." This Bulletin also for the first time set up standards for determining the hours' provisions acceptable to NRA. It declared the guiding principle in preparation of the basic codes to be "consideration of the varying conditions and requirements of the several industries and the state of employment therein." It also specifically asserted that the "average work week" in the codes "should be designed so far as possible to provide for such a spread of employment as will provide work so far as practical for employees normally attached to the particular industry." (**) The definition of standards implied two principles: First, it accepted the proposition commonly advanced by the representatives of industry that no single standard could be applied uniformly to all industry. Each industry was to be considered individually in terms of its special requirements and the extent of its prevailing employment. The criteria were not defined, however, nor were guides provided. In the second place, it followed the premise that unemployed persons normally attached to a given industry should be reabsorbed. No explanation defined the term "normally attached." No suggestion was offered to the few new industries, which were larger in 1933 than in 1929, to govern their regulations. In this manner the program was launched by the Administrators. Meanwhile some of the larger industries were busily formulating the first drafts of their codes.

(*) New York Times, June 17, 1933.

(**) National Recovery Administration, Bulletin No. 2, Basic Codes of Fair Competition (June 16, 1933).

III. Administrative Procedure

Bulletin No. 2 was more explicit with respect to procedure for code making than for hours' provisions of the codes. It showed the organization to be prepared for the receipt of codes of fair competition rather than for agreements developed under Section 7 (b). It accepted the code procedure as the method of developing the standards as to maximum hours, minimum wages and conditions of employment. It stated "It is not the function of the National Recovery Administration to prescribe what shall be in the codes to be submitted by associations or groups. The initiative in all such matters is expected to come from within the industry itself . . . Basic codes containing provisions respecting maximum hours of labor, minimum rates of pay and other conditions of employment which are in themselves satisfactory will be subject to approval, although such conditions may not have been arrived at by collective bargaining." Although the latter part of the Bulletin made reference to Section 7 (b), its place in the NIRA frame-work was not defined. (*)

Administration acceptance of the code method as outlined in Section 3 (a) of the Act and failure to do more than recognize Section 7 (b) had an important bearing upon the development of the policies within NRA, and the specific terms as to wages, hours and conditions of employment developed in the Individual codes. The resulting procedure placed the initiative upon industry. Trade groups primarily through trade associations were charged with the preparation and presentation of proposed codes. These were required to comply with the mandatory sections of the Act, Section 3 (a) providing for an affirmation that the associations and groups presenting the code impose no inequitable restrictions on admission to membership and are truly representative and the codes are not designed to promote monopolies or eliminate or oppress small enterprises and will tend to effectuate the policy of the title and contain Section 7 (a). They were also called upon to specify in such codes minimum wage scales, maximum hours, and conditions of employment. After the proposed code was in proper form a public hearing was called wherein the interested parties might offer evidence. After such hearing, the code as modified, was presented to the President for approval, disapproval or modification. When approved by the President it became binding as prescribed in the Act.

IV. Conclusion

NRA Administrators from the start defined the administrative procedure for code making in its most significant aspects. No such definite policies or standards existed to determine the specific code provisions respecting hours of work. The Administration policy expected each code to contain regulation of the hours of work to absorb the unemployed. These hours were to be shorter than those prevailing. They were to vary as among industries so as to reabsorb the persons "normally attached" to the specific industry.

(*) Ibid.

CHAPTER V

SETTING OF STANDARDS ON BASIC HOURS AND THE FIRST CODE: COTTON TEXTILE

NRA statement of the purpose of the reduction of hours program was clear and unequivocal. It was to reduce unemployment. The goal was vaguely phrased but frequently set at three million returned to employment. No guides were furnished industry for the development of their code provisions. In fact Bulletin No. 2 remained the only formal statement of directions for the greater part of NRA's history. As a result, management in the development of codes could consider any one of a number of suggestions. There were the Thirty-Hour Bill, the U.S. Chamber of Commerce proposal for a basic 40-hour week, the average 32 hour week recommended (*) in the testimony presented at the House Committee's hearings on the Thirty-Hour Bill. Precise directions and definitions were lacking.

I. The Thirty-Two Hour Week Proposal

In response to the pressure for information, the Administrator undertook to clarify the situation somewhat. The principle purpose of the Act he declared was to persuade employers to take back workers by spreading the available work over shorter shifts:

> "The plan is for each industry to absorb the labor normally attached to it at a living wage in fact and for that reason the question cannot be answered for all industries or all conditions by any inflexible rule. But in a general way and without any commitment, we can say . . . that, under present conditions, and as far as the lowest paid class of workers are concerned, an average of about thirty-two hours a week at not less than forty-five cents an hours for the lowest paid type of worker would do this job." (**)

He also reaffirmed the previously enunciated policies, namely, the need for different patterns of hours of work for each industry and for each industry to absorb the labor force normally attached to it. He further suggested a basic average thirty-two hour week, without however, indicating its meaning, application or the range of permissible hours above or below the basic standard.

II. The Cotton Textile Code

The first application of NRA reemployment objectives and policies appeared in the Cotton Textile Code. The hearings began on June 27, 1933.

(*) By Gerard Swope

(**) Address of General Hugh S. Johnson made on June 25, 1933. New York Times, June 25, 1933.

This code on account of the accident of its being the first to be approved exercised influence beyond its intrinsic importance. The industry was characterized by exceptionally low wages and long hours. Furthermore it was experiencing a boom which raised the average hours per worker per week to 49.2. Here was a test of the announced NRA program of reemployment through adaptation to the conditions of the industry and the capacity of individual plants to reabsorb labor.

The cotton textile industry presented a code providing for a basic 40 hour week with a number of exempted occupations, a standard already proposed for itself by the industry before passage of the NIRA. (*) This provision was questioned by organized labor and by some industrial groups. In defense, the industry representatives maintained that less than 40 hours would create a labor shortage in small communities, increase labor cost unduly, require the recruiting of untrained labor from other industries and recall the "graveyard shift." (**)

Labor representatives protested. They urged that the work be limited to 35 hours in order to effect reabsorption of the unemployed, to remove the strain resulting from the stretchout system and more closely to adhere to the thirty-hour week standard of the public works title of the Act. (***) Another labor representative recommended the thirty-hour week to reabsorb the unemployed throughout American industry and a single standard for all industries to which everyone would conform. (****) Quoting NRA Bulletin No. 1 which emphasized reemployment, another declared that "a 40-hour week will not meet that purpose. (*****) He averred that it would result in "certain demoralization in other industries in their effort to establish a shorter work week". (******) He discounted the possibility of labor shortage, declaring, "let there be business and they will find labor." (*******)

(*) New York Time, May 11, 1933

(**) Cotton Textile Hearings, June 27, 1933, pp. 59-63

(***) Statement of Thomas F. McMahon, President of the United Textile Workers.
Ibid., June 28, 1933 - Release No. 18, p. 45

(****) Ibid., June 23, 1933 - Release No. 13, p. 106 and p. 6 of William Green's speech.

(*****) Statement of Sidney Hillman
Ibid., June 23, 1933 - Release No. 18, p. 127

(******) Ibid., pp. 128-129

(*******) Ibid., p. 131

Policy formulation for administrative action was confronted with two conflicting theories. On the one hand were employers who argued for prevention of overproduction through rigid limitation on the machine hours and the restriction of factory operations to two shifts. In defense of this position they noted that the forty-hour week will "not only reabsorb or absorb all the cotton mill workers who have been employed in part, but will also absorb a great many thousands who have never been employed by the industry at all." (*) Any additional reduction would intensify problems of hiring and of training new workers. Labor, on the other hand, urged a shorter work week because of the widespread unemployment in all industries. It discounted problems of training on the ground that promotions within the ranks would more than suffice to meet situations. (**) Industry also was disturbed by the forty-hour week. The counsel for certain trade associations characterized the forty-hour week as a "severe blow" to the success of the NIRA. No smaller industries, he predicted, would accept a shorter week than forty if the textile code was approved despite the fact that they had become reconciled to a thirty-five hour week. He noted that "if the Administration desires to have the aims of the Recovery Act fulfilled it must see to it that the major industries are not granted too much leeway." (***)

On the other hand a question which persistently appeared in the Administrator's cross examination of witnesses was whether an industry "should take back labor which is naturally attached to that industry" or should "also reach into the other industries." (****) The question also arose as to whether it was proper policy to ask an industry to do more than reabsorb its "proportion of the unemployed." (*****) This point of view was opposed to labor's thesis that the average work week in all industries was the proper basis for determining hours in the Cotton Textile Code. The proposed alternative was to study each separate industry and to determine its obligations to its own unemployed.

(*) Ibid., June 27, 1933 - Release No. 13, p. 17 - Testimony of Mr. Robert Amory.

(**) Ibid., June 28, 1933, pp. 53, 113.

(***) Reported Statement of Mr. Sol Herzog, Counsel for a number of trade associations. American Federation of Labor Weekly News Service - July 8, 1933, quoting New York newspapers as the source.

(****) Ibid., June 28, 1933 - p. 109, 113 - General Johnson's question on p. 113 is: "What I am trying to get at is this question of policy. I am trying to develop whether there is an onus on any particular industry to take on more men than can be reasonably expected to be employed in normal economics in the United States under conditions we have seen."

(*****) Ibid., June 28, 1933 - p. 132, Statement of the Deputy Administrator.

The solution decided upon was to accept the forty-hour week in the cotton textile industry for "a four months' period," disregarding the single standard for all industries. Instead conditions in the cotton textile industry in 1929 were used to estimate the effect of a forty hour week upon employment, resulting in the following conclusions:

> "The industry under the 40-hour week would presently absorb the available corps of textile workers and assuming a continuation of the present trend would provide openings for unemployed from related or nearby industries. The reduction in the working week to forty hours will effect the reemployment of the hitherto unemployed and permit the substantial absorption from the outside of a potential 15 to 25 per cent employment over and above the depression level." (*)

This decision established the procedure for determining hours of employment. Each industry was to be dealt with separately. Pursuant to this policy, it was announced that the proposed Cotton Textile Code was not intended to constitute a precedent for other industries. The explanation given was that the cotton textile industry was not operating "nearly at full capacity and there is some question as to whether they can find sufficient skilled employees for a full 40-hour week. It ought to be obvious to anybody that an industry at a low rate would have to have a shorter week to absorb its own unemployed workmen. A 40-hour week in industry generally would not scratch the surface of our job of putting large numbers of unemployed back to work. Indeed I know of no other industry in which we would even receive for consideration a code proposing a 40-hour week." (**)

This hearing therefore established the precedent of individual treatment of an industry and defined the term, "normally attached", as meaning the number of persons employed by the industry in the year 1929. The industry was not called upon to absorb more than the total number of employees in 1929. If it took on more than that number it was to be particularly commended. No account was taken at that time of those who would not be reabsorbed if the 1929 employment level were attained in each industry, or of the impossibility of attaining that level in industries affected by a rapid rate of seasonal decline.

(*) National Recovery Administration, Codes of Fair Competition, Vol. I, p. 5.

(**) Release No. 20 - June 28, 1933.

CHAPTER VI

PRESIDENT'S REEMPLOYMENT AGREEMENT

The acceptance of the Cotton Textile Code did not result in indication of intent to follow suit on the part of the "ten large industries." Apparent "indifference" prevailed among them and reluctance to act because of "the advice of Chambers of Commerce and Merchant's Associations to their members to go slow", the lawyers' counsel to their "clients that there are loopholes in the law", (*) and the coolness to the entire move in view of "the upswing in prices inspiring increased production and the desire of manufacturers to benefit from the price rises." (**) Consequently, the device of the PRA was used to stimulate activity. Eight reasons were given for the adoption of this program: (1) the realization that action had to be prompt and national in character, covering all industries; (2) the absence of industrial organization; (3) the widespread anticipatory speculatory activity in industry; (4) the need for reaching into intrastate businesses as well as interstate concerns; (5) the value of having public opinion supporting the enforcement of the Act; (6) the need for immediate action; (7) the importance of finding some method of getting the reluctant industries to act; (8) finally, the need of some easy administrative method, generally applicable and adaptable to all industry by means of exemptions. (***)

To overcome inertia and indifference, the principles of a blanket code for all industries were discussed by the Administrator with the three NRA Advisory Boards. In a private session of the Industrial Advisory Board that day between the afternoon and night joint sessions, it determined that its policy with respect to the provisions of the blanket code would be that "no code should be approved that was higher in hours or lower in wages than expressed by the Cotton Textile Code recently signed" (****) Likewise, it agreed that an average thirty-five hour maximum week would be acceptable if provision was made for a forty hour maximum in a single week with an eight-hour day. (*****) This recommendation for averaging resulted from a statement of the necessity of such averaging within the automobile industry. (******) At the joint meeting of the several Boards and the Administrator that same evening, a subcommittee was formed to formulate the provisions on the basis of the general discussion which had taken place. (*******) The Committee presented to the general committee the following agreement which was approved:

(*) Business Week, July 1, 1933
(**) Journal of Commerce, July 6, 1933
(***) H.S.Johnson, "The Blue Eagle from Egg to Earth," (New York: 1935), pp. 253-58.
(****) Minutes of Industrial Advisory Board, July 10, 1933.
(*****) Ibid.
(******) Ibid. Statement of Mr. Sloan
(*******) The members of the subcommittee were: Labor, William Green and Leo Wolman; Industry, Gerard Swope and Alfred P. Sloan; Consumers, Mrs. Charles Rumsey.

"For office employees, stores, banks, utilities, salesmen, excepting executive and traveling salesmen, maximum hours of 40 per week and a minimum wage of $15.00 per week. Distinction might be made according to size and locality of community. Manufacturing industries - maximum hours should be 35 per week in the '13 week period' but with the right to work 40 hours in any 4 weeks of that period and not more than 8 hours in any one day." (*)

This hours provision remained substantially unaltered though the proposals on wages underwent considerable revision in the hands of the deputy administrators and other staff officers. The Administrator reported to his staff of deputy administrators and advisers that "the President has approved the plans for Bulletin No. 3, on the emergency reemployment drive." (**) In the President's Reemployment Agreement as finally approved the following provisions concerning the hours of employment were included:

"(2) Not to work an accounting, clerical, banking, office, service or sales employees (except outside salesmen) in any store, office department, establishment, or public utility, or on any automotive or horse-drawn passenger, express, delivery, or freight service, or in any other place or manner, for more than 40 hours in any 1 week and not to reduce the hours of any store or service operation to below 52 hours in any 1 week, unless such hours were less than 52 hours per week before July 1, 1933, and in the latter case not to reduce such hours at all.

"(3) Not to employ any factory or mechanical worker or artisan more than a maximum week of 35 hours until December 31, 1933, but with the right to work a maximum week of 40 hours for any 6 weeks within this period; and not to employ any worker more than 8 hours in any 1 day.

"(4) The maximum hours fixed in the foregoing paragraphs (2) and (3) shall not apply to employees in establishments employing not more than two persons in towns of less than 2,500 population which towns are not part of a larger trade area; nor to registered pharmacists or other professional persons employed in their profession; nor to employees in a managerial or executive capacity, who now receive more than $35 per week; nor to employees on emergency maintenance and repair work; nor to very special cases where restrictions of hours of highly skilled workers on continuous processes would unavoidably reduce production but, in any such special case, at least time and one third shall be paid for hours worked in excess of the maximum. Population for the purposes of this agreement shall be determined by reference to the 1930 Federal census.

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"(13) This agreement shall cease upon approval by the President of a code to which the undersigned is subject; or, if the NRA so elects, upon submission of a code to which the undersigned is subject and substitution of any of its provisions for any of the terms of this agreement.

(*) Minutes of the Industrial Advisory Board Meeting of July 10, 1933 - Evening Meeting of Subcommittee.

(**) Report of Staff Meeting, July 17, 1933, First Session Bulletin No. 3 announced the President's Reemployment Agreement to the country and outlined procedure to be followed.

"(14) It is agreed that any person who wishes to do his part in the President's reemployment drive by signing this agreement, but who asserts that some particular provision hereof, because of peculiar circumstances, will create great and unavoidable hardship, may obtain the benefits hereof by signing this agreement and putting it into effect and then, in a petition approved by a representative trade association of his industry, or other representative organization designated by NRA, may apply for a stay of such provision pending a summary investigation by NRA, if he agrees in such application to abide by the decision of such investigation. This agreement is entered into pursuant to section 4(a) of the National Industrial Recovery Act and subject to all the terms and conditions required by sections 7(a) and 10(b) of that act."

In many respects, this statement introduced new principles into the approved hours' formula. In the first place, it differentiated between factory and non-factory personnel. It recognized a 35 hour week for the factory workers. It set up a seasonal or peak tolerance in the exemption to the forty hours' week comprising a six weeks' period during the last five months of the year. (*) It established an 8-hour day for factory workers but not for the non-factory employees. It exempted completely large areas of industry consisting of "establishments employing not more than 2 persons in towns of less than 2,500 population, which towns are not part of a large trade area." It exempted specific classes of employees. In this way there emerged the major elements of the NRA policy with respect to hours. These included differentiation between factory and non-factory hours, with exemptions for special periods and classes of occupations.

The PRA also affected policy on hours through provision, in Section 1[illegible], for an exemption procedure for cases where "great and unavoidable hardships" would result from compliance with the original terms of the agreement. The problem soon became significant though a staff meeting of the deputy administrators had declared that "the general policy will be to avoid exemptions as far as possible." (**)

The 32 hour week having been suggested as a possible guide, the exception in the case of the cotton textile industry was at the time specifically declared to be unusual. The Administrator meanwhile increasingly suggested that the hours of labor should be set between 30 and 40 per week depending on the number of unemployed among those normally attached to an industry (***) The next official document, the PRA, by setting up a normal 35 hour week and a 40 hour maximum for peak periods, evidenced the assumed theory that the Cotton Textile Code established a maximum.

To meet the plan for immediate codification, the Administration waived the principle of individual industry standards and approved a single universal hours' provision barring unusual circumstances. In this respect it returned to the original idea of the amended Black-Connery Bill except for the character of the arrangement and the idea of enforcement through

(*) In the hearings on the Cotton Textile Code, General H.S. Johnson inquired of one witness: "Wouldn't you be in a much better relation to the actual business now existing, if we did have an average 36 hours over six months with a maximum of 8 hours in a day and a maximum of 40 hours a week?" (Cotton Textile Hearings, June 27, 1933, Afternoon Session, Release No. 14, p. 64).

(**) Report of Staff Meeting - July 22, 1933

(***) Meeting of July 8, 1933 with the Emergency National Committee of the Lumber and Timber Products Industry - History of the Lumber and Timber Products Code. Exhibit R.

voluntary public cooperation.

The proposals in the PRA were accepted as standards instead of the 33 hour week previously proposed by the Administrator, (*) as a report of a staff meeting of deputy administrators to consider general policies showed. It contained the following statement:

> "Standards for industrial plants in general would seem to have been arrived at approximately as follows: 35 hours per average week and minimum wage of 30¢ in low cost areas up to 40¢ in metropolitan areas. When an industry proposes a longer work week or lower wages, it is proper to suggest very strongly that the burden of proof will be upon them to establish their position." (**)

The PRA as a standard tended to supercede the principle of variability of hours among industries.

Developments following the PRA determined the degree of adherence to the decision that the Cotton Textile Code should set the maximum terms of employment and to the individual determination of the hours provision of an industry on the absorption of those unemployed persons normally attached to the industry. (***) It left unsettled the issue of using the 1929 employment record as a gauge of hours for the industry. The question whether precedent, individual industry capacity for reemployment as measured by the 1929 employment base, or collective bargaining was to govern the provisions in the codes relating to hours of work remained unsettled.

(*) By radio address of June 25, and statement to the Shipbuilders on July 22.

(**) Report of Staff Meeting, July 22, 1933. Statement of Mr. Dudley Cates.

(***) Report of Staff Meeting of Deputy Administrators, July 22, 1933: General Williams asked if the 35 hour maximum workweek in industry provided for in the President's reemployment program would apply in the event of the filing of code by industry. It was agreed that neither this nor any other provisions of the President's Reemployment Agreement would apply to any code. The general policy would be to work out maximum hours in each industry's code on a basis designed to "absorb as many of the unemployed in that industry as possible."

CHAPTER VII

THE CALCULATION OF CODE HOURS

The formulae for hours obtainable by the individual industry's responsibility for raising employment to the 1929 level, although quite different from organized labor's proposal of uniform hours for all industries to be determined by the extent of unemployment in the whole United States, required factual information for each industry separately.

Consequently, the Division of Research and Planning was asked to present the necessary estimates and calculations. The economic adviser to the deputy administrator or officer handling a code helped to ascertain minimum wages and shifts and maximum hours. These economic advisers were requested by the Division of Research and Planning to determine "the working hours required to restore employment to the level of 1929 or other base period . . . (and the) numbers which would have been employed in 1931 and 1932 and at present if proposed maximum hour regulations had been in effect." (*)

The resulting data varied in accuracy and reliability. Where information was available it was often inadequate for the purpose of the NRA. Frequently definitions of their industry by those presenting codes did not coincide with those used in existing statistical materials. In many instances there was no information at all. Sometimes under such circumstances, the Division of Research and Planning conducted special investigations. (**) In many cases the only information upon which conclusions were based were the unverified estimates or guesses of code sponsors, frequently unacquainted with conditions prevailing within their own industry.

(*) Research and Planning Staff Memorandum No. 3, (July 14, 1933) from Mr. Von Szeleski, subject: "Outline for Industry Reports." In the Staff Memorandum No. 7, (September 27, 1933) on "Preparation of Statistical Reports" from Mr. Von Szeleski, the following is included:

"C Ordinarily the discussions would center around two main points:

(1) Maximum hour provision which will contribute towards absorbing the unemployed, the absorption ability of a single industry being given due consideration.

(2) A minimum wage, so far as possible, will restore in large measure the purchasing power of 1929, but which should recognize the paying ability and the price characteristics of the industry - ability to absorb production at increased prices."

In Staff Memorandum No. 52 from V.S. Von Szeleski, (November 14, 1933) on "Subjects for Reports," he suggests as subject (c): "How much Reemployment will be effected by the Code? If you cannot calculate it, at least guess."

(**) See "Wages and Hours in American Industry" by Solomon Barkin and Anne Page. Works Material nine

These were the materials upon which NRA decisions were founded. The first two hundred approved codes showed the resulting problems (Appendix B) (*)

Most of these first two hundred approved codes covered industries for which there was information on the number of employees, but less frequently data with respect to actual and average hours. Estimates of the necessary hours' standards to increase employment to the 1929 level were therefore sometimes impossible. The accuracy of these estimates was further affected by the fact that they were based upon estimated total man hours and number of persons on the payroll, without allowances for occupational exemptions or the seasonal flexibilities permitted in the code. The importance of this omission may be gauged from a study of 31 major industries employing some 4 million persons. It was found that 17.0 per cent of the employees worked in occupations with limited exemptions and 13.0 with total exemptions permitting work beyond the code basic hours; and 68.3 percent more were permitted to work additional hours during seasonal or peak periods. (**) These exemptions were sufficiently serious to modify the estimates on reemployment in the codes, yet no allowance was made for them in the calculations. The figures showed the probable effect of the single test of employment by each industry equal to its 1929 level.

For forty-eight of the first two hundred approved codes the Division of Research and Planning made definite recommendations concerning basic hours required to reemploy at least up to the number on its 1929 pay roll. The recommendations were distributed according to the following frequency distribution: two industries, hours between 5 and 9 per week (funeral supply; and shovel, dragline andcrane); three industries, hours between 10 and 14 per week (all metal insect screen; structural clay; and vitrified clay sewer pipe); four industries, hours between 15 and 19 hours per week (business furniture; office equipment; floor and wall clay tile; and scientific apparatus); nine industries, weekly hours between 20 and 24; three industries, weekly hours between 25 and 29; eight industries, weekly hours between 30 and 32.4; seven industries, weekly hours between 32.5 and 34.9; three industries, weekly hours between 35 and 37.4; seven industries, weekly hours between 37.5 and 40; and one industry each for 43 and 50 hours (american match; and ice industries, respectively.)

In 72 additional industries estimates were available of anticipated reemployment following approved or proposed code hours. The estimates were mainly calculations of the percentage of accessions to the pay roll resulting from shortening of the hours to an indicated level of hoursto the number on the pay roll in 1929. These figures, though frequently estimates based upon estimates, were the best data available for setting of standards and determining NRA policy.

Of these 72 industries, it was estimated that 26 would have employed under the code hours as many or slightly more persons than were on their pay rolls in 1929. (Table 1). That group contained several new or expanding industries such as oil burner, domestic freight forwarding, wholesale automotive, wax paper, and grain strip wood block, and sanitary

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(*) In NRA Studies Special Exhibits - Work Materials No. 45 - B

(**) " Hour and Seasonal Differentials in Selected N.R.A. Codes." (Appendix C) In NRA Studies Special Exhibits - Work Material No. 45 - B

TABLE 1

DISTRIBUTION OF CODES BY PERCENTAGE ESTIMATED EMPLOYMENT UNDER CODES OF 1929 EMPLOYMENT IN INDIVIDUAL INDUSTRIES AND BY BASIC WEEKLY HOURS USED IN CALCULATION OF ESTIMATED EMPLOYMENT UNDER CODES IN DIVISION OF RESEARCH AND PLANNING REPORTS

Percentage Total Estimated Employment Under Codes in Industry of 1929 Employment in the Industry	Basic Weekly Hours Used in Calculation of Estimated Employment Under Codes in Division of Research and Planning Reports							
	Total	35	36	37	40	44	48	54
Total	72	4	6	1	53	3	3	2
25 - 49%	9	1	1		7			
50 - 59	5	1			4			
60 - 69	9	2	2		5			
70 - 79	7				5		1	1
80 - 89	4				3	1		
90 - 99	12		1		10	1		
100 - 109	11		1		10			
110 - 119	4				3		1	
120 - 149	7		1		5			1
150 and over	4			1	1	1	1	

Source: Appendix B

In NRA Studies Special Exhibits - Work Materials No. 45-B

napkin industries. The rest, on the basis of estimates, would not have increased their number of employees to the 1929 level. In fact, 23 industries would have employed less than 70 per cent of their 1929 quota.

The conclusions concerning probable hours in the codes under rigid adherence to this formula throughout all the code negotiations were: (1) Basic hours per week would have varied widely in the codes ranging from about ten to more than forty hours; (2) most of the codes would have established a basic standard of considerably less than forty hours though individual industries might have adopted forty hours or more; (3) the impracticability of reducing hours to as low as ten or twenty was patent and considerations in addition to the formula under consideration would have been seen necessary; (4) additional criteria were required for industries with excessive pre-NRA working hours since return to the 1929 level in some of them would still have left average hours out of line with prevailing policy; (5) maintenance of a living wage on the shorter work week would have become particularly acute in the very industries in which production and employment was at its lowest ebb; (6) a special policy would have been necessary with respect to the responsibility of new or expanding industries for absorbing some of the increase in working population and some of those who could not be returned to the industries where reduction of hours could not be practiced sufficiently to raise employment to the 1929 level; and (7) some provision would have been required to employ those not reemployed through the shortening of hours, the public works projects and the hoped for revival of industry resulting from the industrial recovery measures.

CHAPTER VIII

CODES SUBMITTED DURING PERIOD FROM JULY 6, 1933 to AUGUST 15, 1933.

While the program established by NRA policy would have resulted in a wide range of hours of labor among the various industries, the employer proposals did not vary so markedly. The effect of the first NRA endeavors and proclamation of its purposes is given in a summary review of the early code proposals as announced in the various newspapers and noted in the NRA "Press Digest" (Appendix D). (*)

While the newspaper summaries were inexact, they showed the basic work week contemplated by industry. During the period covered extending over more than a month, a range of industries including apparel and textile industries, iron and steel, retail, trucking, and construction, had drafted and discussed codes. These industries were "almost universally asking for forty (40) hour work week as a minimum work period. They evidently had taken their cue from the cotton textile code." One newswriter declared that "it is just as evident that they chose to ignore warnings by both the President and Mr. Johnson that a forty (40) hour week was not to be taken for granted for all industries." (**)

The Press Digest reports were corroborated by a review of the original proposals of the first one-hundred approved codes. The basic hours' proposals for the production employers for these industries indicated that only ten contemplated a shorter basic week than forty hours (40) for their production employees. Those recommending a shorter week were;

30 hour basic week - cast iron soil pipe;
32 hour basic week - bituminous coal and oil burner;
35 hour basic week - automobile and gasoline pump;
36 hour basic week - electrical, laundry and dry cleaning machinery mfg.; compressed air; heat exchange and pump mfg.

Offsetting this group were the four industries which presented a longer than forty (40) hour basic week in their proposed codes. (***) All of the other eighty-six codes were presented with a basic forty (40) hour week for the production employees. (See Appendix E)

(*) In NRA Studies Special Exhibits - Work Materials No. 45-B

(**) Philadelphia Public Ledger, (July 18, 1933) - "General Code Being Rushed for Laggards" - by W. W. Wheaton.

(***) They were: salt manufacturing with a basic forty-two (42) hour week for processing and manufacturing, and a forty (40) and forty-eight (48) hour week respectively for the North and the South; the transit industry with forty-four (44) hours for the shop and forty-eight (48) hours for operating divisions, and a forty-eight (48) hour basic week for motor vehicle retailing and motor bus industries.

The PRA was in part, intended to minimize the importance of the Cotton Textile Code as a precedent; but the codes which were submitted or even under consideration during the latter part of July and the early part of August after the PRA drive was proclaimed, only in a limited number of cases, broke away from this forty (40 hour standard. In several instances, they did propose a shorter work week, particularly in the apparel industries, and in several metal manufacturing industries operating at a very low rate of capacity.

An industry generally followed the first precedent instead of devising its own independent standards or trying to reach its employment levels of 1929. A general uniformity resulted unrelated to the amount of unemployment in the respective branches of industry. Since the NRA program was founded on the principle of voluntary cooperation by industry these facts were enormously significant for reemployment. NRA was presented with proposals not developed in accordance with its standards. The effect of this drive toward uniformity in provisions concerning hours of work unrelated to basic conditions or ability to absorb, raised the question whether the Administration should undertake and succeed in the wholesale revision of the codes toward greater conformity with NRA standards or whether the avalanche of similar codes presented by groups unwilling to accept other terms was to modify NRA activity and policy.

CHAPTER IX

HOW'S PROVISIONS OF P.R.A. SUBSTITUTIONS

The first indication of resolution of this problem appeared in NRA action with respect to the President's Reemployment Agreement. The NRA organization turned its energies for a time toward popularizing the PRA and making it succeed. This drive had hardly gotten underway, however, before individual industries appealed to the NRA for exemptions from the basic agreement. The significant test was at hand.

Industry generally approved PRA but sought exemptions from the basic agreement. NRA at the start adopted "the general policy.. to avoid exception as far as possible." (*) But this policy was hardly proclaimed before it was found necessary to develop some systematic machinery for handling such exemption cases. Deputy administrators were considering exceptions requested by industry and confusion became evident in the absence of uniform policy. Furthermore, the Labor Advisory Board's inability to handle the smaller industries was pointed out with the recommendation that "the policy of the NRA should be to set up some general principle which would govern." (**) Finally, the NRA Policy Board was established. (***) to correlate policies and report upon petitions for substitutions of code for PRA provisions.

I Procedure for Substitutions

To obtain a substitution the industry was required to file a copy of its proposals for consideration by the Administration. In the handling of these substitutions of the PRA standards by proposed code standards, the root question was whether NRA should return to the cotton textile precedent or accept hours' standards in terms of the condition of each specific industry. The Administrative stand was that "there would be no blanket exceptions..." In those instances, however, where industry had a code which appeared to come close to meeting the general objectives of the NRA of reemploying people in the industry and of setting an adequate minimum wage to increase purchasing power, the industry was permitted to obtain the insignia while following the usual code procedure. The Administrator insisted, however, that "this procedure would not be permitted to whittle away the basic requirements of the NRA" (****)

The Policy Board, as established, interpreted its functions narrowly. In instructions to petitioners, it declared that "the only function of the Board is to pass on the applicability of the code provisions as written. This does not allow any bargaining for or negotiating or personal interviews Such a procedure is not only inappropriate but it does not allow for the

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(*) Report of Staff Meeting, July 22, 1933.

(**) Report of Staff Meeting, July 31, 1933. Statement of Dr. Leo Wolman

(***) On August 7, 1933, Office Order No. 18.

(****) Report of Staff Meeting, Muly 31, 1933. Statement of General Johnson.

prompt treatment to which all petitioners are entitled." (*)

In the instructions, the primary purpose of the PRA was reiterated. It was noted that the "NRA will not elect to approve the substitutions of the provisions of the codes - for par. marks of PRA unless such code provisions cover the same ground as the PRA paragraph and unless the substance of such provisions is within the spirit of the PRA, i.e. to shorten hours and raise wages, to increase employment and purchasing power to approximately the 1929 level." (**) In fact, it was hoped that this procedure requiring the submission of a code previous to the request for an exemption would lead to the revision of the "wages and hour provisions of a submitted code so as to have it within the spirit of PRA for substitution purposes." (***)

On the worksheet which was to be developed to support the substitutions, the applicants were requested to furnish "data to show that these provisions would bring wages and hours to approximately the 1929 level." (****)

II Approved Substitutions

In view of this frequent reiteration of the NRA position that industry's proposals should be in harmony with the aims of NRA, the results are of special interest. In all, 566 petitions for substitutions were presented by individual industries. Of this number 45 were withdrawn by the industry; for 2 there was no record of action; 131 were disapproved by NRA; and 3 were rejected by the industry after modification had been made by NRA (*****) Practically all the substitutions were approved during August and September 1933, principally during the former month.

The hours' provisions in the PRA were the ones most seriously questioned by industry, as illustrated by the fact that most of the PRA substitutions granted related to paragraphs 2, 3, and 4 of the PRA which governed the hours of non-productive employees, of productive employees, and the hour exemptions for specific classes, respectively. All of the substitutions modified one or more of the hours provisions of the PRA. In fact, 355 of the substitutions, or 91 per cent, related to the hours of productive employees, and 334 substitutions concerned paragraph 2, governing the hours for non-productive employees (Table 2). In contrast, only 239 of the substitutions or 62 per cent modified the minimum wage rates with respect to productive employees. The modifications for the other paragraphs were relatively minor. The incidence of the PRA substitutions was, therefore, principally on the hours provisions. (Appendix F) (******)

(*) H. C. Hoover, "History of the President's Reemployment Agreement." Organization Studies Section - Draft of December 2, 1935, p. 15

(**) Ibid., p. 44

(***) Ibid., p. 45.

(****) Ibid., quoted on p. 45.

(*****) Ibid., p. 49

(******) In NRA Studies Special Exhibits - Work Materials No. 45-B

TABLE 2

PRA SUBSTITUTIONS BY NUMBER OF MODIFICATIONS
FOR INDIVIDUAL PARAGRAPHS OF PRA

Paragraph of P.R.A.	C O N T E N T	Modified Provisions Number of Substitutions
1	Child Labor Restrictions	II
2	Hours of Non-Productive Employees	284
3	Hours of Productive Employees	383
4	Hour Exemptions (Population, Skilled Worker & Executive)	54
5	Wages - Non-productive Employees	56
6	Wages - Productive Employees	239
7	Maintenance of Wage and Equitable Adjustment	20
8	Subterfuge	1
9	Price Increases	7
10	Patronize NRA Establishments	3
11	Cooperate in Submitting Code	4
12	Price Adjustments on Contracted Goods	3
13	Termination of Agreements	2
14	Undue Hardship Clause	3

TABLE 3

SUMMARY OF HOUR PROVISIONS OF PRA SUBSTITUTIONS, BY BASIC HOURS, TYPE OF PROVISION, AND INDUSTRY GROUP

Basic Hours	Type of Provision	Total	Metals- F & MP	Non-Met. Min.	Fuel	Forest Prods.	Chem., Drugs & Paints	Paper	Rubber	Equip.& Mchy.	Food	Tex-Fabrics	Tex-Apparel	Lthr. & Furs	Fabricating	Graphic Arts	Construction	Trns. & Comm.	Finance	Recreation	Service Trds.	Distr. Trds. Whole.	Distr. Trds. Retail
33	Flat Max	1								1													
35	Total	5		1						3	1						3						
	Flat Max	3		1						1							1						
	Pk. Per.	2									1						1						
	Aver'g.	3								2							1						
36	Total	11		5	1					3					1		1						
	Flat Max	4		3													1						
	Pk. Perd	4			1					3													
	Aver'g.	3		2											1								
40	Total	315 2/3	7	14	2	5	20	23	1	28	55	23	18	4	50	15	2	4	7		5	24	8 2/3
	Flat Max	146 5/6	2	2		2	9	11	1	13	24	14	16	2	25	4		2	5		1½	11	2 1/3
	Pk. Perd.	25 1/3					3	1		2	5	1		1	2	1						6	3 1/3
	Aver'g.	138½	5	11	2	3	8	11		13	26	8	2	1	20	10	1	2	2		3½	7	3
	Av. & Pk.	5		1											3		1						
42	Aver'g.	1	1																				
44	Total	11 1/6						1			7½				1						1		2/3
	Flat Max	4 5/6						1			1½				1						1		1/3
	Pk. Perd.	1/3																					1/3
	Aver'g.	3									3												
	Av. & Pk.	3									3												
45	Flat Max	2																			1	1	
48	Total	30 2/3					1				10				1		1	7			2	4	4 2/3
	Flat Max	20 1/3					1				5				1		1	3			2	4	3 1/3
	Pk. Perd.	3 1/3									3												1/3
	Aver'g.	6									2							4					
	Av. & Pk.	1																					1
50	Flat Max	½									½												
	Aver'g.	1									1												
54	Flat Max	2																			1		1
	TOTAL	385	8	20	3	5	21	24	1	35	75	23	18	4	53	15	7	11	7		10	29	15

APPROVED FOR NO SUBSTITUTIONS

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III Basic Hours in Substitutions

The modifications made in the hours provisions radically changed the basic hours as conceived by the original Agreement.

While a thirty-five (35) hour week for manufacturing industries with a forty (40) hour week peak period exemption had been originally conceived as adequate, this proved unsatisfactory to the trade association and employer groups. They filed requests for exemptions. Most of the 384 substitutions granted increased the basic hours of employment in addition to relaxing the peak period and seasonal tolerance permitted under the original President's Reemployment Agreement. Only eight substitutions adopted the basic hours of the PRA while one adopted a thirty-three (33) hour week. The other substitutions, comprising 97.6 per cent of all those approved adopted a longer work week. The group providing for a forty (40) hour week included 315-3/3 of the substitutions and constituted 82.1 per cent of the total number. (*)

Of the remaining 69-1/3 substitutions, eleven adopted a thirty-six (36) hour week and the others obtained grants for a more than forty (40) hour week. The latter group consisting of 48-1/3 substitutions mainly provided for forty-four hours (18-1/6 substitutions) and forty-eight (48) hours(30-2/3 substitutions). The longest week approved in the substitutions was for fifty-four (54) hours. (Table 3). This complete departure from the basic hours prescribed by the original PRA was a significant index of the industry's forcefulness in presenting to the NRA the propriety of longer hours than agreed upon as proper and adequate by the NRA and the Industrial Advisory Board in the original consideration of the PRA. The fact that the code substitutions covered industries employing more than seventeen million workers (**) showed how far reaching the deviations from the PRA substitutions were from the basic agreement.

In these substitutions by industry groups a larger proportion of the substitutions for the construction industry adopted the basic PRA substitution than did any other groups. Next in order came the equipment and machinery group. In the following industriesall substitutions provided for a basic forty (40) hour week: forest products, rubber, textile-fabrics, textile-apparel, leather, furs, graphic arts, and finance. The following additional industrial groups included no substitution with more than forty (40) hours, and several with lessthan forty (40 hours; non-metallic minerals, fuel, and equipment and machinery. The industries with the largest proportion of substitutions with hours longer than forty (40) were in the transportation and communication group. Next in order of the longest proportion of hours beyond forty (40) was retail distribution

(*) The fractions refer to substitutions where two or more sets of basic hours were established. If three different basic hours were provided the substitution was noted in each hour group as 1/3

(**) Office of National Recovery Administration, Division of Review, Substitutions in connection with the President's Reemployment Agreement by Paul Hutchings, Work Materials No. 30

which also included the substitution specifying the longest hours or fifty-four (54). The service trades and the food groups had also a significant number of substitutions with longer hours. Few substitutions in the other industrial groups had longer than forty (40) hours.

The forty (40) hour pattern, therefore, prevailed among the industries which obtained substitutions. The number with shorter hours was comparatively small; the number with longer hours was relatively larger. Of course, industries desiring a thirty-five (35) hour week might not have requested a substitution. However, the codes presented during the first two months of NRA and those for the industries which had not obtained substitutions indicated that they had not, on the whole, subscribed to a shorter week than forty (40) hours. The codes with rare exceptions provided for a forty (40) hour week or longer.

IV. Seasonal Tolerances

However, the hours provisions of the PRA substitutions were not found exclusively in terms of the basic hours. In fact the structure of the hours provisions was so complicated that determination of the actual average maximum hours for employees within a given industry was difficult without detailed calculations and intimate knowledge of the practices of the industry. Such computations must have taken account of employment for an entire year. It necessitated record of: (a) the number of employees subject to flat maximum hours regulations; (b) of those granted seasonal allowances, with the number of weeks of the exemptions and the weekly tolerance and, (c) the occupational exemptions from the basic hours involving calculation of the number of employees and the tolerance per week.(*) The seasonal and occupational exemptions permitted a longer working week and, consequently, higher average annual maximum hours for the industry than possible under the flat maximum rules without exemptions. Industries sought to increase peak, seasonal and occupational exemptions insofar as permitted. Basic weekly hours meant to many not the maximum, but the average attained if slack and peaks were included. The conflict between these two concepts was a significant phase in the history of NRA policy.

A. Flat Maximum Regulations

Of the entire 364 substitutions, 184.5 established flat maximum regulations for their hours of work. (Table 4). Of these, eight had less than (40) hours and 29-2/3 codes more than forty (40) hours. In no important industry group did the substitutions consist exclusively of flat maximum regulation of hours, although about forty per cent of the substitutions in most groups consisted of such flat maximum regulation. In the textile apparel group sixteen of the eighteen substitutions contained such specifications. The forest products (four out of five), textile-fabrics (thirty-one out of seventy-four) and service trades (6.5 out of ten) were next in proportion of their substitutions in this group. The graphic arts and the metals, ferrous and non-ferrous, generally permitted wider seasonal variations than the other groups.

(*) See Appendix C for an analysis of seasonal and occupational exemptions for 31 selected codes. In NRA Studies Special Exhibits - Work Materials No. 45-B

TABLE 4

PRA SUBSTITUTIONS CONTAINING FLAT MAXIMUM HOUR PROVISIONS, BY MAXIMUM HOURS AND INDUSTRY GROUPS

INDUSTRY GROUP	Total	Less than 40 Hours	40 Hours	More than 40 Hours	33 Hours	35 Hours	36 Hours	40 Hours	44 Hours	45 Hours	48 Hours	50 Hours	54 Hours
Total	184½	8	146 5/6	29 2/3	1	3	4	146 5/6	4 5/6	2	20⅓	½	2
Metals-Fer. & Non-Fer.	2	–	2	–	–	–	–	2	–	–	–	–	–
Non-Metallic Minerals	6	4	2	–	–	1	3	2	–	–	–	–	–
Fuel	0	–	–	–	–	–	–	–	–	–	–	–	–
Forest Products	2	–	2	–	–	–	–	2	–	–	–	–	–
Chem., Drugs & Paints	10	–	9	1	–	–	–	9	–	–	1	–	–
Paper	12	–	11	1	–	–	–	11	1	–	–	–	–
Rubber	1	–	1	–	–	–	–	1	–	–	–	–	–
Equip. & Machinery	15	2	13	–	1	1	–	13	–	–	–	–	–
Food	31	–	24	7	–	–	–	24	1½	–	5	½	–
Tex-Fabrics	14	–	14	–	–	–	–	14	–	–	–	–	–
Tex-Apparels	16	–	16	–	–	–	–	16	–	–	–	–	–
Leather & Furs	2	–	2	–	–	–	–	2	–	–	–	–	–
Fabricating	27	–	25	2	–	–	–	25	1	–	1	–	–
Graphic Arts	4	–	4	–	–	–	–	4	–	–	–	–	–
Construction	3	2	–	1	–	1	1	–	–	–	–	–	–
Trans. & Communication	5	–	2	3	–	–	–	2	–	–	3	–	–
Finance	5	–	5	–	–	–	–	5	–	–	–	–	–
Recreation	No Substitutions Approved												
Service Trades	6½	–	1⅓	5	–	–	–	1⅔	1	1	2	–	1
Distr.Trades - Whlsle.	16	–	11	5	–	–	–	11	–	1	4	–	–
Distr.Trades - Retail	7	–	2 1/3	4 2/3	–	–	–	2 2/3	1/3	–	3 1/3	–	1

Since the industries generally sought flexibility in hours provisions at various times, the other substitutions, some 300 in number, included provisions for peak and seasonal conditions designated in the substitution. On the whole, these cases fell within two categories: averaging and defined peak period tolerances. They considerably increased the average maximum work week.

B. Averaging

More than three-quarters of the foregoing substitutions adopted the averaging method of seasonal tolerance. This procedure allowed for working time aggregating specified maxima in given weeks, but the total over a specified number of weeks or months was not to exceed the basic average specified in the code. The most frequent averaging period adopted in the substitutions was eight to ten weeks, although the four to five weeks and the thirteen weeks period were common. In twenty substitutions the averaging period was six months and in four, one year. (Tables 5 and 6). In these industries the significant provision was frequently the maximum weekly hours rather than the basic hours stated in the code, since slack periods permitted the weekly maximum specified in the code to become the real operating hours for the industry. The modal difference between the basic and the actual weekly time was eight hours (109.5 substitutions). In the substitutions for thirty industries weekly hours were unlimited so long as the average over the designated period did not exceed the specified basic standard. (Table 7). The averaging procedure was later declared by NRA to be the provision most difficult to enforce and most subject to abuse. It did much to modify the basic hours established in codes, if not completely to nullify their intent.

C. Peak Period Tolerance

The second type of tolerance permitted definite peak periods during specified periods of the year. This peak period tolerance was evidently a more adequate administrative and compliance method than averaging for meeting special and unusual cases. The definite peak period tolerance could be more accurately defined and therefore more carefully safeguarded from abuse and restricted to the actual needs of the industry. The whole procedure depended, of course, upon development of standards and policy concerning the proper grant or use of tolerances; but NRA experience was too brief for their development and the insistent desire of industry for tolerance too strong to permit proper consideration of this problem. Single formulae were sought irrespective of its shortcomings and its possible effect on the regularization of employment.

Of the total substitutions, 35 provided peak periods. The greatest number were in the seasonal food industries, in wholesale distributing and in the equipment and machinery classification. The propriety of a peak period provision depends upon the degree of their adaptation to the industry's requirements. This is shown by the length of the peak period tolerance, (Tables 8 and 9). The most common duration was six weeks, but twenty of the thrity-five codes established periods of twelve weeks or less. However, six substitutions extended the tolerance provision over an entire year or for an unlimited time. Actually, therefore, working time in these industries could be indefinitely extended without violating the provisions of the PRA substitution. Obviously a

TABLE 5

SUMMARY OF PRA SUBSTITUTIONS CONTAINING AVERAGING TYPE OF HOUR PROVISIONS, BY BASIC HOURS, TYPE OF PROVISION, AND INDUSTRY GROUP

Basic Hrs.	Aver'g. Period	Max. Wkly. Hrs.	Total	Metals-F & NF	Non-Met. Min.	Fuel	Forest Prods.	Chem., Drugs & Paints	Paper	Rubber	Equip. & Mchy.	Food	Tex-Fabrics	Tex-Apparel	Lthr. & Furs	Fabricating	Graphic Arts	Construction	Trns. & Comm.	Finance	Recreation	Service Trds.	Distr. Trds.Whl	Distr.Trds.Rtl.
35	8 wks.	Unltd.	1								1													
	6 mos.	48	1															1						
	1 year	48	1								1													
36	4 wks.	42	1													1								
	6 mos.	42	1		1																			
	6 mos.	48	1		1																			
40	Total		138½	5	11	2	3	8	11		13	26	8	2	1	20	10	1	2	2		3½	7	3
	4-5 wks.	44	1					1																
	"	48	16½				1	1	3		2	3				1	4			1		½		
	"	Unltd.	6			1			1			1	1							1		1		
	6 wks.	48	4					1								1	1		1					
		Unltd.	4			1										2			1					
	8-10 wks.	44	3		1							1		1										
		48	57	2	5		1	3	4		6	8	4	1	1	9	3					1	6	3
		Unltd.	7		1						1	4	1											
	13 wks.	44	1																			1		
		48	17	2	2		1	1	2		4	2				1	1							1
		Unltd.	3	1								2												
	4 mos.	48	2										1					1						
		Unltd.	1									1												
	6 mos.	44	1														1							
		48	12		2			1	1			2	1			5								
		54	1													1								
		Unltd.	1									1												
	1 year	45	1									1												
42	13 wks.	Unltd.	1	1																				
44	6 wks.	48	2									2												
	6 mos.	48	1									1												
48	4 wks.	Unltd.	1																1					
	3 mos.	Unltd.	3																3					
	6 mos.	Unltd.	1									1												
	1 year	56	1									1												
50	2 mos.	Unltd.	1									1												
	TOTAL		155½	6	13	2	3	8	11		15	32	8	2	1	21	10	2	6	2		3½	7	3

APPROVED

SUBSTITUTIONS

NO

9862

TABLE 6

PRA SUBSTITUTIONS WITH AVERAGING TYPE OF HOUR PROVISIONS, BY BASIC HOURS AND AVERAGING PERIODS

Basic :		AVERAGING PERIOD						
: Total	: 4 - 5 weeks	: 6 weeks	: 8 - 10 weeks	: 13 weeks	: 4 mo.	: 6 mo.	: 1 year
Total	158½	25½	10	69	25	3	20	3
35	3	-	-	1	-	-	1	1
36	3	1	-	-	-	-	2	-
40	138½	23½	8	67	21	3	15	1
42	1	-	-	-	1	-	-	-
44	3	-	2	-	-	-	1	-
48	6	1	-	2	3	-	1	1
50	1	-	-	1	-	-	-	-

TABLE 7

PRA SUBSTITUTIONS WITH AVERAGING TYPE OF HOUR PROVISION, BY BASIC HOURS AND HOURLY DIFFERENCE BETWEEN BASIC AND MAXIMUM WEEKLY HOURS

Basic Hours	Total	Difference Between Basic and Maximum Weekly Hours							
		4 hrs.	5 hrs.	6 hrs.	8 hrs.	12 hrs.	13 hrs.	14 hrs.	Unl.
35	3	-	-	-	-	-	2	-	1
36	3	-	-	2	-	1	-	-	-
40	138⅓	6	1	-	108⅓	-	-	1	22
42	1	-	-	-	-	-	-	-	1
44	3	3	-	-	-	-	-	-	-
48	6	-	-	-	1	-	-	-	5
50	1	-	-	-	-	-	-	-	1
Total	155⅓	9	1	3	109⅓	1	2	1	30

provision so easily evaded was of slight value in effecting reemployment.

The second aspect of the study of peak period tolerance was the allowed maximum weekly hours during the tolerance period. The mode here, as in averaging, was eight hours. Four substitutions provided a four hour difference from the basic week, while eight, on the other hand, permitted unlimited hours during the peak period. The latter substitutions with no restrictions during peak periods therefore cancelled any possible effect upon unemployment achieved by shortening of the hours during normal operation. (Table 10).

D. Averaging and Peak Period Tolerance

Nine substitutions contained both peak period tolerance and averaging provisions. The industries concerned, largely in the fabricating and food groups and ordinarily operating under averaging arrangements, were permitted for specific limited peak periods to work special hours which were not counted in the normal averaging process. Such substitutions still further expanded the hours provisions. (Table 11).

TABLE 8

HOURS PROVISIONS OF PRA SUBSTITUTIONS CONTAINING PEAK PERIOD TOLERANCES, BY BASIC HOURS, TOLERANCES AND INDUSTRY GROUPS

Basic Hours	Peak Tolerance Duration	Max.	Total	Fuel	Chem., Drugs & Paints	Paper	Equipment & Machinery	Food	Textiles-Fabrics	Leather & Furs	Fabricating	Graphic Arts	Construction	Distr. Trades Whsle.	Distr. Trades Retl.
35	Unlt'd.	Unl.	1					1							
	6 wks.	40	1										1		
36	Unl'd.	Unl.	3				3								
	12 wks.	40	1	1											
40	4 wks.	48	1		1										
	6 wks.	48	9				1	1						5	2
	8 wks.	48	1½					½						1	
	12 wks.	48	2		1				1						
	4 mos.	48	1		1										
	24 wks.	48	1					1							
	6 mo.(32hrs)	48	1				1								
	7 mos.	48	1					1							
	Unlt'd.	43	1					1							
	4 wks.	44	2							1				1	1
	6 wks.	45	1								1				
	8 wks.	45	1			1									
	8 wks.	52.8	½					½							
	12 wks.	48	1									1			
	1 year	96	1								1				
	5 wks.	Unl.	1/3												1/3
44	5 wks.	Unl.	1/3												1/3
48	5 wks.	Unl.	2					2							
	16 wks.	52.8	1					1							
	5 wks.	Unl.	1/3												1/3
TOTAL			35	1	3	1	5	9	1	1	2	1	1	6	4

TABLE 9

PEAK PERIOD TOLERANCE IN PRA SUBSTITUTIONS, BY BASIC HOURS AND TOLERANCE PERIODS

Basic Hours	Total	TOLERANCE PERIODS											
		4-5 wks.	6 wk.	7 wk.	8 wk.	12 wk.	16 wk.	4 mo.	24 wk.	6 mo.	7 mo.	1 yr.	Unltd.
35	2		1										1
36	4					1							3
40	25 1/3	3 1/3	10		3	3		1	1	1	1	1	1
44	1/3	1/3											
48	3 1/3	1/3		2			1						
Total	35	4	11	2	3	4	1	1	1	1	1	1	5

TABLE 10

PEAK PERIOD TOLERANCES IN PRA SUBSTITUTIONS, BY BASIC HOURS AND DIFFERENCE BETWEEN BASIC AND MAXIMUM WEEKLY HOURS

Basic Hours	Total	Difference Between Basic and Maximum Weekly Hours				
		4 hrs.	4.8 to 5 hrs.	8 hrs.	12.8 hrs.	Unlimited
35	2	-	1	-	-	1
36	4	1	-	-	-	3
40	25 1/3	3	2	18½ *	½	1 1/3 **
44	1/3	-	-	-	-	1/3
48	3 1/3	-	-	-	1	2 1/3
Total 35		4	3	18½	1½	8

* Includes one substitution giving one week of 48 hours during each 8-week period.

** Includes one substitution with peak limited to 144 hours per year.

TABLE 11

HOUR PROVISIONS OF PRA SUBSTITUTIONS CONTAINING BOTH AVERAGING AND PEAK PERIOD PROVISIONS, BY BASIC HOURS, TYPE OF PROVISION, AND INDUSTRY GROUP

Basic Hours	Averaging Period	Averaging Maximum	Peak Duration	Peak Maximum	Total	Non Met Min	Fab	Constr	Distr. Trades Retail	Food
40	2 mo.	48	Unlt'd.	48	1	1				
	12 mo.	Unlt'd.	4 wks.	48	1		1			
	10 wks.	48	16 wks.	54	1		1			
	6 mo.	Unlt'd.	1 year	144 extra hr.	1		1			
	8 wks.	Unlt'd.	1 wk. ea.8	48	1			1		
44	12 mo.	48	16 wks.	52.8	3					3
48	12 mo.	Unlt'd.	6 wks.	54	1				1	
TOTAL.....					9	1	3	1	1	3

V. Occupational Exemptions

These seasonal and peak period provisions did not exhaust the list of exemptions. The basic hours were further modified by the exceptions of specific types of employees. Although analysis of their relative importance is beyond the scope of this study, about a fourth of the employees under 31 codes for which evidence is available were either totally or to a limited degree exempt from basic hours provisions, the proportion being 13 per cent for each type. Since another 62.3 per cent came under seasonal and peak period provisions these exemptions markedly effected the probabilities of reemployment for those industries. Appendix C. (*)

Of the PRA substitutions 31 contained no modification of paragraph 4 providing for additional occupational exemptions. (Table 13). The most common occupational exemptions under PRA were for watchmen (223); engineers (122 substitutions); firemen (112 substitutions); and repairmen (103 substitutions). These also tended to modify the hours' regulations, reducing the necessity of hiring additional persons and, with it, opportunities for reemployment.

VI. Conclusion

The actual terms of the PRA substitution brought out the gap between the original basic PRA agreement and the terms of the substitutions under which industries actually operated. Instead of a simple arrangement originally contemplated by the Agreement with a thirty-five hour week for manufacturing and a forty (40) hour week for service industries, the rule became forty (40) hours with substitutions more frequently establishing a longer than a shorter work week. Though it had originally contemplated grant of but few substitutions, PRA became more identified with the employment standards of the substitutions than with those in the original agreement. Hours of labor provisions were qualified by longer basic hours and exemptions for seasonal and peak periods and for specific occupations.

The first test disclosed wholesale departure from original NRA standards. With these modifications went the influence which the agreements might have exerted upon future codes. In some codes PRA agreements, instead of temporary drafts subject to wholesale revisions, became the standards for code negotiations, and PRA substitutions were decisive in determining the hours pattern of the NRA codes.

A pattern was established for the basic hours. Unlike the one contemplated by the rigid enforcement of the 1929 employment level theory, these substitutions adopted uniform basic hours but varied largely in terms of the seasonal or peak period or occupational exemptions. The short period available for the study of these substitutions afforded no opportunity for study or assurance that the exemptions really were

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(*) In NRA Studies Special Exhibits - Work Materials No. 45-B.

TABLE 12

OCCUPATIONAL GROUPS EXEMPT FROM BASIC HOUR PROVISIONS OF PRA SUBSTITUTIONS, BY INDUSTRY GROUPS AND EXEMPT OCCUPATIONS

INDUSTRY GROUP	Watch-men	Engi-neering	Fire-men	Elec-tri-cians	Re-pair	Main-te-nance	Deliv-ery Trck'g	Ship-ping	Skill-ed Group	Con-tin-uous Process	Others	Special Group
Substitutions Total	223	122	112	67	103	65	64	29	4	5	121	30
Metals-Fer. & Non-Fer.	4	-	-	-	-	-	-	-	-	1	-	2
Non-Metallic Minerals	15	7	6	4	7	6	-	2	-	4	11	-
Fuel	-	-	-	-	1	1	-	-	-	-	1	2
Forest Products	5	3	3	1	2	2	1	1	-	-	-	-
Chem., Drugs & Paints	16	10	9	3	7	3	3	3	1	1	5	0
Paper	12	9	8	4	7	3	7	-	-	-	5	1 (*)
Rubber	1	1	1	1	1	-	-	1	-	-	1	-
Equip. & Machinery	22	14	14	12	13	6	1	2	2	-	11	5
Food	41	25	20	9	17	11	16	5	-	-	32	5 (*)
Tex-Fabrics	12	10	9	9	8	2	2	2	-	-	6	1
Tex-Apparels	8	9	9	7	8	2	1	4	-	-	5	-
Leather & Furs	3	2	1	1	2	-	1	1	-	-	3	-
Fabricating	36	21	23	11	18	10	6	8	-	-	22	1 (*)
Graphic Arts	6	1	1	0	2	2	2	-	-	-	6	-
Construction	1	-	-	-	-	-	-	-	-	-	-	-
Trans. & Communication	5	-	-	-	2	2	-	-	-	-	5	1
Finance	1	-	-	-	-	-	-	-	-	-	1	6
Recreation	NO SUBSTITUTIONS APPROVED											
Service Trades	6	1	1	-	-	1	1	-	-	-	1	2 (**)
Distr. Trades -Whlsle.	21	9	7	5	8	11	20	-	-	-	4	1
Distr. Trades -Retail	8	-	-	-	-	3	3	-	1	-	2	3

(*)Includes one special exemption affecting all employees
(**)Includes one special exemption, and one special group held to shorter hours

required by the industry. The pressure of industry proposals overwhelmed the Administration and forced it to yield to industry's own proposals and did not permit it to effect any wholesale revisions to make them conform to NRA policy. While less than forty hours per week would have been required according to the Division of Research and Planning calculations, the substitutions provided generally for forty hours or more with few exceptions plus extended concessions in the form of tolerances and occupational exemptions which in a definite number of cases completely nullified all restrictions, and in other cases permitted operations at levels far exceeding those current in the industry. In the PRA substitutions NRA gave up its goal of reemployment to the 1929 level in each industry and accepted a basic pattern uniform for most industries above that originally contemplated. By accepting this position NRA greatly reduced its opportunities for marked increases of reemployment. Nevertheless, the reemployment achieved during the period was marked, estimated at about two and three quarter millions in face of a declining trend of production. (*)

(*) Anne Page's "Unemployment and Reemployment", Division of Review Work Materials 45, Part B. See tables on PRA.

CHAPTER X

ADMINISTRATIVE CONSIDERATION OF CODES

The above situation as depicted presents NRA's dilemma from the start. NRA policies were formulated; its objectives were clear; its standards were but vaguely suggested. The PRA set up a definitive guide, but its substitutions broke this down. Industries proposed codes with hours' provisions based more on the Cotton Textile Code and on certain views expressed at the inception of NRA than on the principles enunciated by NIRA. Further, practice deviated still more from expressed standards through the provisions for flexibility and occupational exemptions and for longer hours.

I. The Administrative Official

The proposals submitted to the NRA were mostly unsatisfactory, judged by pronounced standards. This discrepancy between proposals and Administration standards constituted the basis of the negotiations carried on in NRA. These were placed in the hands of the deputy or assistant deputy administrator charged with the consideration of the code. He played a manifold role. His first duty was to aid in shaping the code to square with the Administration's objectives; - recovery and reemployment. He was to apply the standards set by the Administration. At the same time, he was usually free to form conclusions concerning the capacity of the industry to carry the burden of increased pay rolls. In actual practice he was generally unchecked in the early months by administrative review. Cases arose where a deputy sought to increase hours because of his own views concerning means toward recovery.

II. Voluntary Nature of Code System

The deputy's power to make changes in any proposed code was limited because the voluntary assent of the representative employer group was the dominant factor. Though the history of NRA code negotiations is full of instances where imposition of codes was threatened, no such codes were actually imposed upon any industries. In cases where imposed, they were rejected by industry and rendered inoperative. (Structural iron and steel fabricating industry and artificial limb industry). (*)

(*) For extended description of Structural Iron and Steel Fabricating Industry Code see: Solomon Barkin's "Labor and the Codified Construction Industry under N.R.A." Building Trades Department of American Federation of Labor, Washington, 1935, pp.5-10; for artificial limb industry, see Code History for the Code of Fair Competition for the Artificial Limb Industry by R. F. Davies.

This was important since a determined industry group could create unusual problems of negotiations. In addition, the administrative organization attempted quickly to complete the codification of industry. Individual officials were urged to consummate negotiations, receiving frequent administrative inquiries concerning delays experienced in coditions of an industry. Many yielded to this pressure because the word was passed about in administrative circles, toward the end of 1933, that there would be a period of wholesale revision of codes when all of the conflicts, inequalities, and contradictions would be straightened out. Only in a limited number of cases was the Administration willing to delay approval of codes in order to secure higher standards.

III. Trade Practice and Labor Provisions

Counteracting these tendencies was the desire of many industries for special trade practice and price or production control provisions. Under such circumstances deputy administrators or their assistants were in a position to negotiate for significant modifications of labor provisions of the code, particularly if they were in full possession of the economic data on the industry. Industrial groups were frequently willing to go a considerable distance in exchanging concessions with respect to labor provisions. The trade practice control provisions in such cases represented compromises which employers were willing to accept as the price for the advantages of a code. However, relatively little effort was made to use the leverage of trade practice provisions to secure higher labor standards.

IV. Labor Participation

It was the presence of the labor representatives which helped to assure consideration for labor's interests and compliance with stated administrative policy. Their relation to the code negotiations varied according to the industries and the Administration officials in charge. In all codes, labor representatives could present their case at a public hearing and be represented at pre and post-public hearing conferences by a person designated by the Labor Advisory Board. However, deputies not entirely friendly to labor's position could minimize the opportunities for the later meetings. At these conferences, the administrative official could assume one of several attitudes. He could follow the principle that determination of labor provisions could be most equitably developed between the employer and the labor representatives, remaining in the background unless differences became irreconcilable. He could adopt the attitude that he was to revise the code according to his own idea, calling upon the labor adviser only when he believed it desirable. In this case he frequently restricted negotiations to specific unsettled matters. Finally, some officials believed that their province was to make decisions and carry on negotiations and that the adviser was merely to furnish them with suggestions and supporting data, but not to participate in any of the discussions.

The course pursued was in part determined by the forcefulness of the labor representative, the place of labor organization in the industry, the industry's attitude, the personality of the deputy administrator, and NRA administrative direction. The labor representatives comprised (1) officials of unions in the specific industry; (2) officials of unions claiming jurisdiction in the industry but representing only small numbers of workers; (3) officials of unions in cognate industries in cases where organization or competent leadership was absent in the particular industry; (4) members of the Labor Advisory Board; and (5) members of the staff of the Board. The burden of the negotiations fell particularly on the fourth and fifth groups as many of the industries under consideration were not unionized, and union officials were busy with their organizational duties, so that even when able to participate in the public hearing, they were usually not free to follow through the many succeeding negotiations, appear at the numerous conferences, or attend to the mounting detail accompanying prolonged consideration of each code. Only in a limited number of cases, where particular industries were well organized and codes were early approved was there continuous participation of union officials. It fell upon staff members to watch NRA routine and policy, and to define official procedures and to assure labor's participation in the negotiations. It was the presence of organized labor on the Labor Advisory Board plus the position of the Board to review each code which furnished its major leverages.

V. NRA Policy

No less important was the "fish-bowl" concept of code development

prevalent within NRA. The three Advisory Boards established to represent the consumer, industry and labor interests were called into the negotiations. In fact, during the early hearings supervised by the Administrator himself, the post-hearing committees were almost formally constituted of representatives from the Industrial and Labor Advisory Boards particularly. The precise place of these Advisory Boards and detailed procedures, including circumstances under which the deputy administrator was called upon to invite these Boards into the process of negotiation were set forth in an early office order dated August 5, superseding an earlier one of July 24. The Advisory Boards were to receive copies of the tentative codes together with the code analysis suggestions. They were to participate in a conference with the deputy administrator and with the steering committee of the industry. For the public hearing, the Boards were to designate an official adviser. After the public hearing, they were to submit reports on each revision and to participate in whatever meetings and conferences were called. This principle of participation by the advisers was frequently reaffirmed by office memoranda, informal instructions and the activities of the advisers themselves.

The resulting negotiations varied in character and effectiveness. A few had the character of actual collective bargaining between labor and employers before the code was presented to the administrator. A few others developed into collective bargaining after submission of the code and during consideration by the Administration. A third somewhat larger group, was the product of negotiations between employers and unions which were effectively organized but could not bargain for the entire industry, nor speak for all the employers. Their control of parts of the industry, however, gave them a bargaining leverage. This group concluded what were called "union-dominated" negotiations. Most commonly, in more than 85 per cent of the codes, "representative bargaining" was conducted by a union or person designated by the Labor Advisory Board representing labor in the negotiations. These negotiations without the force of union backing had to rely on precedent, argumentation, objective evidence and purported NRA policy and strength. In this weaker bargaining position effectiveness depended upon the support of the administrative official NRA policy and the industry's desire for a code. Real collective bargaining power took place only in few cases. The administrative official in charge of the code was the pivotal figure in the administrative process if changes were to be made.

Actual operation of policy and determination of provisions concerning basic hours of employment were evidenced, for one thing, in the changes made in basic hours in the first one-hundred codes approved as compared with the original proposals. These first hundred represented industries submitting codes before precedents became established and easily copied. In the second place, the evolution of policy was apparent in the codes which deviated from the dominant forty (40) hour pattern of the PRA substitutions and from the early draft of codes.

Revisions during the period of the administrative consideration of the first one-hundred approved codes indicated that the basic hours' provisions were not materially altered. Only nine codes were approved with shorter basic weekly hours than originally proposed;--50 codes were approved with the same basic hours as proposed but with more strictly defined seasonal or occupational tolerances;--35 codes were approved with the same basic

weekly hours as proposed and retaining their recommended seasonal and occupational tolerances; and six codes were approved with longer weekly hours than originally proposed. (Appendix E.)(*) Only 15 out of the first one-hundred approved codes had their basic hours changed from the original proposals. (See Appendix E.) (**) Six of the nine codes in which hours were reduced were among the first twenty approved codes.

These first hundred codes showed the importance of expediency, precedent and personalities, and the roles of labor and industry in determining the provisions regulating hours of work.

(*) In NRA Studies Special Exhibits - Work Materials No. 45 - B.

(**) In NRA Studies Special Exhibits - Work Materials No. 45 - B.

CHAPTER XI. APPROVED CODES AMONG FIRST ONE-HUNDRED WITH SHORTER HOURS THAN ORIGINALLY PROPOSED

Of the first approved codes which contained shorter hours than originally proposed comprised nine industries, viz., shipbuilding and shiprepairing, coat and suit, lumber and timber products, petroleum, men's clothing, cast iron soil pipe, motor vehicle retailing, dress, and fire extinguishing appliance. The original draft, for the shipbuilding and shiprepairing industry, for example, suggested forty (40) hours; but these were reduced in the approved code to an average of thirty-six (36) hours for merchant building and of thirty-two (32) for Government work. In shipbuilding and the coat and suit industries the reductions effected through the negotiations period were substantial; while in others, such as the lumber and timber products and fire extinguishing appliance industries, the reduction was not so great.

The questions raised in connection with approval of hours provisions included: (1) Industry's position and its defense; (2) the parties to the controversy; (3) the arguments and the statistical information presented; (4) the position of the administration; (5) the types of negotiations which led to the change; (6) the part played by various industry and labor groups in effecting the modification; (7) the theory which underlay the final acceptance of the proposal by the Administration if such was pronounced. In general when discussion of the codes brought about reduction in hours the results were mainly due to: (1) efforts of the Administration; (2) combined pressure of the Administration and the labor representatives; and (3) collective bargaining.

I. Hours Reduced by Direct Efforts of Administration.

A. Lumber and Timber Products.

In the lumber and timber products industry, the reduction in conformity with NRA policy came about through administrative efforts without the assistance of a substantial labor organization and in face of opposition from certain sections of the industry. The problem was to maintain the forty (40) hour week. The conference of the southern hardwood lumber industry, meeting June 15, 1933, set the eight (8) hour day and the six day week as its code requirement, (*) but excepted woodsmen, who were to work not more than forty-eight (48) hours a week. At the meeting of the National Lumber Manufacturers Association two weeks later the main issue was the difference over hours of employment. At that time, according to the report of one industry representative, "most of the mill owners all agreed to a thirty-six (36) hour week but west coast lumber men, because snow makes their season short, argue they need a forty-eight (48) hour week". (**)

(*) Florida Times Union, June 16, 1933.

(**) Comment at this meeting held in Chicago, June 15, 1933, by Mr. E. C. Mason, Secretary of the Western Pine Association. "The Morning Oregonian" - Portland, Oregon (June 29, 1933).

(****) (Continued)

West coast logging and lumber industry; 48 hours per week is recognized as maximum working shift adapted to plants and physical operating conditions in this industry. The present maximum working shift shall be 48 hours per week in logging camps and 40 hours per week in lumber manufacture.

Western pine industry, the same as in west coast logging and lumber industry, except in Arizona and New Mexico, where standards shall be the same as in the southern pine industry.

Western red cedar shingle industry, the same as in the west coast logging and lumber industry.

Woodwork industry: The present maximum shall be 40 hours per week as an average for each half-year period, with 48 hours the maximum for any one week.

Southern hardwood industry, 48 hours per week; mahogany industry, 40 hours per week; oak flooring industry, 48 hours per week; Philipine mahogany industry, 40 hours per week; veneer industry, Southern zone 44 hours per week; Northern zone, 40 hours per week.

Walnut industry, 40 hours per week; northern hardwood industry, 48 hours per week; maple flooring industry, 48 hours per week; hardwood dimension industry, 48 hours per week; northeastern hardwood industry, 48 hours per week.

1. Management's Case

The representatives of the industry declared that forty-eight (48) hours were customary in the northwest and generally nearly sixty (60) in the south. The southern lumber representatives proposed a forty-eight (48) hour week, estimating that this change would reemploy some 31,250 persons but would still leave the total number of workers in the industry at about seventy-five percent (75%) of those in 1929. These southern representatives stated that a "lesser work week" would bring "dislocations" as "manual labor is predominant and the climatic conditions will not permit of high practices." (*)

The hours of employment in the northwest had been agreed upon by the representatives of the employer and of the employee representation organization in the northwest, the Loyal Legion of Loggers and Lumbermen, who submitted it as complying with Section 7(b) of the Act. (**) They proposed a thirty-six (36) hour week with elastic provision for a forty (40) hour week if required by the job or to balance production, consumption and employment. (***) Since in the industry in the northwest during the first six months of 1933, "twenty-one percent (21%) of (the) production was at shifts less than thirty-six (36) hours; 13.75 percent at a forty (40 hour shift;) 13.69 at a forty-four (44) hour shift; sixteen percent (16%) at forty-eight (48) hours and twenty-one percent (21) at various shifts in excess of forty-eight (48) hours." (****) A forty (40) hour week was proposed for mills and a forty-eight (48) hour week for logging camps. The short duration of logging camp operation and the limited housing facilities were given as the reasons for the particular exemptions, also impractability of a double shift and the logging camp worker's need to earn a satisfactory yearly income during the shorter period. It was estimated that the 40 hour week in the sawmills would result in the reemployment in the northwest of 14,000 workers. The forty (40) hour week was recommended to assure flexibility "to permit practical adjustments of the operating conditions to the desired volume of construction or to the actual order file",....."recognizing the fact that a considerable number of operations will actually observe a shorter week." (*****) The eastern pine industry, however, averred that its problems were particularly seasonal and that the fifty-four (54) hour maximum was suited to its conditions that the forty-eight (48). Other areas protested against differentiation between the logging and the mill areas and asked for a flat forty-eight hour week for both. (******)

(*) Testimony of Mr. C. C. Sheppard - July 20, 1933, Release No. 70 pp. 52-59.

(**) Testimony of Mr. Ruegnitz, President of the L.L.L.L., P. 89, and Colonel W. B. Greely, of the West Coast Lumber Manufacturers Association, p. 1015.

(***) Testimony of Mr. Ruegnitz - p. 89.

(****) Testimony of Mr. Greely, p. 1007.

(*****) Testimony of Colonel W. B. Greely, pp. 1000-1004.

(******) Testimony of W. S. Johnson, California White and Sugar Pine Association, p. 4014.

2. Contrary Positions.

Sharp protest against the proposed hours was voiced by the representative of the Coos Bay Lumber Company, who recommended a thirty-six (36) hour week for the logging camp and a thirty (30) hour week for the sawmill, together with a minimum wage of fifty (50¢) cents which was considerably above the highest rate in the proposed code. He contended that the "effect of an eight hour day on West coast unemployment in the Douglas fir region (will be) no reemployment." (*) As for the proposal for the logging operations, he contended that "no one operates longer (than forty-eight hours) today and no one has for years." With reference to the sawmills, he remarked that "very few operating units are or have recently been operating forty (40) hours per week at full hourly capacity." He indicated that the only mills operating on such basis or longer were those which "kept the markets demoralized by a two hour shift." (**)

The representative of organized labor (***) declared that "it is impractical to consider a work week of forty (40) to forty-eight (48) hours when twelve million have no way to earn their daily bread." In recommending a shorter work week he remarked that the proposed schedule "will not reemploy any of the unemployed in the industry." (****)

3. The Administrative Modification of the Code.

The Administrator was critical of the proposals by the industry. When the operators asked for approval on July 22 of their proposal "to give immediate consideration to the matter of at least a tentative approval of making effective immediately the schedules as filed in relation to working hours and minimum wages," (*****) he refused the request because he was dissatisfied with the provisions. (******) As a result changes were made in the code after the public hearings were completed on July 26. The revised draft was submitted on July 28, after lengthy conferences by the Emergency National Committee. Strikes in the Pacific Northwest impelled the industry to seek a speedy solution but no marked concessions were made in the hours provisions. (*******) In fact, except for a rephrasing of the

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(*) Testimony of Mr. W. Denman, July 24, 1933, p. 3008.

(**) Ibid., pp. 3008-3010.

(***) Mr. William Green was organized labor's principal representative at this hearing.

(****) Ibid., July 21, 1933, p. 1032.

(*****) Ibid., p. 2006.

(******) Journal of Commerce, July 25, 1933.

(*******) On July 28, Mr. J. D. Tennant addressed General Johnson informing him that the Emergency National Committee was extremely anxious to obtain early approval of the code in view of the "agitation and strikes (which) are being formented. Uncertainty of prospective wages and hours of work is causing much anxiety among both employees and employers." Code histroy Exhibit R. See also Journal of Commerce, July 29, 1933, Tacoma Times, August 21, 1933.

provision to define more specifically the nature of seasonal operations and to require that allowances for them be granted by the administrative agencies of the various division, no changes were made. Basically, the code retained the principle of the forty hour week for sawmills in the northwest and in certain minor cases, and the forty-eight (48) hours for logging operations and all other sawmills.

Following this, on August 1, the Administrator definitely denied the request for temporary approval of the wage and hour provisions to allay uncertainty in the industry. He continued to negotiate for a more complete revision of the labor provisions particularly with respect to the low minimum wages and the hours provisions. This stand was based upon the conclusion that a forty (40) hour week applicable to all districts "as well as for the northwest" would be desirable "although this represents an average shortening of hours approximately 1/3 for the south and north as compared with 3/10 to 1/6 for the northwest." It was estimated that "an increase in volume of sales 'took place' permitting an increase of about fifty per cent of recent rates of production," would "restore employment to as many persons as were occupied with lumber and timber products industries in the south during 1929.(*)

As to the Douglas Fir industry, it was expected that the "reduction to forty (40) hours per week in both mills and camps would not provide as much employment, on a relative basis, as the same schedule when applied to operations in the south." (**) Therefore, the forty (40) hour week was accepted by the Administration "after giving due weight to all relevant considerations even though at the prevailing rate of production reemployment could not be expected by such a work week." Another consideration was thought to justify the position of NRA, viz., that "about sixty-five per cent of total lumber production is absorbed by the construction industry." (***) This was interpreted to mean that a "considerable time must elapse before the effects on volume of employment can be definitely shown." (****) However, no statement of policy was made concerning the workers "normally attached" to the industry who would not be absorbed by this method.

(*) Statement of the deputy administrator - Codes of Fair Competition, Vol. I, pp. 100-102.

(**) Ibid.

(***) Ibid.

(****) Ibid.

The stand taken with respect to seasonal exemptions was that the pronounced seasonal character of operations in some areas and the variety of the exceptional and emergency conditions in the industry generally required "certain flexibility in the maximum hours of labor per week accompanied by adequate restrictions to prevent such flexibility from being made the vehicle of abuses. Necessary safeguards are provided by requiring that average employment, in any seasonal operation shall not exceed the standard schedule of hours during any calendar year." (*)

Several conferences were held with the leaders of the industry and the representatives of the Labor Advisory Board. (**) Finally a report was prepared (***) with the recommendations noted above. These were worked out in greater detail with the industry representatives who accepted them.

The final provisions in the Lumber Code relative to hours of labor were the following:

(*) Codes of Fair Competition, Vol. I, pp. 101-102.

(**) Wall Street Journal, August 2, 1933.

(***) By Deputy Administrator Cates, Ibid., August 12, 1933.

(a) General Provisions and Exceptions

"exceptions to the standards in respect to maximum hours of labor specified herein are authorized as follows:

(A) Executive, supervisory, traveling sales force and camp cooks.

(B) Regular employment in excess of such standards, for employees such as watchmen, firemen, and repair crews, where required by the nature of their work, for not more than 10% of the employees in any operation, but time and a half shall be paid for weekly overtime.

(C) Temporary employment in case of emergency.

(D) Seasonal Operations - Seasonal operations are defined as those which on account of elevation or other physical conditions or dependence upon climatic factors are ordinarily limited to a period of ten months or less of the calendar year.

The administrative agency of a Division or Subdivision may authorize employment in a seasonal operation for a maximum number of hours not exceeding 48 hours in any week with the exception of parts of an operation depending on climatic conditions, such as stream driving and sled hauling, in which a greater excess may be authorized; provided, that the average employment in any seasonal operation in any calendar year shall not exceed the standard schedule.

(E) Manufacturers of wooden packages for perishable fruits and vegetables may be authorized by the administrative agency of the Wooden Package Division to depart from the standard schedule of maximum hours applicable to said manufacturers for a period not to exceed four weeks for any one crop, when necessary to furnish packages for any perishable crop; provided that the average employment of any individual in any calendar year shall not exceed the standard schedule.

(b) Subject to the foregoing exceptions, the maximum hours of employment in the respective divisions and subdivisions shall be 40 hours per week.

(B) Fire Extinguishing Appliance Industry

The fire extinguishing industry was one of the few in which the Administration secured modification in the code provisions regulating hours before the public hearing. The code as first presented by the industry on August 28, 1933, provided that "no manufacturers shall employ any factory, mechanical, or office worker more than a maximum week of forty (40) hours, except watchmen who may be employed a maximum of forty-eight (48) hours, except outside salesmen and employees in a managerial or executive capacity who now receive more than thirty-five ($35) dollars per week." (*) After a conference with the NRA

(*) Code of Fair Competition for the Fire Extinguishing Appliance Manufacturing Industry, Vol. II. Copy of Code Registry No. 1314-01.

officials, this provisions was changed to provide for a thirty-five (35) hour basic week averaged over a three months' period with a forty (40) hour maximum. Clerical workers were to be overned by a forty (40) hour week.(*) This change was made largely because the fire extinguishing appliance industry overlapped the motor fire apparatus industry which had proposed a basic thirty-five (35) hour week and the hours provisions of the latter were accepted for both to avoid conflict or charge of discrimination. The industry's argument was that "figures so indicate that on a basis of a factory work week of thirty-five (35) hours this industry would, on resumption of business comparable to the average of 1928-1929-1930, when the average factory work week of the industry was forty-six (46) hours plus, absorb one-third more workers than the average number employed during the three years mentioned above."(**

Labor's counterproposal recommended elimination of peak tolerances and adoption of a flat maximum. It called for "a thirty-five (35) hour in fact . . . . to eliminate the averaging provision which makes it possible to work an employee forty (40) hours in any one week."(**) This recommendation brought no further change in the hours provisions, the primary cause for the decrease in hours being to standardize the hours regulations for two inter-dependent industries.

II. Reduction Effected by Administration and Labor Representatives.

A. Shipbuilding and Shiprepairing Industry

Industry's proposals were sharply criticised in the Shipbuilding and Shiprepairing Industry Code which was the second to be approved. The issue has been formulated well in advance. Despite the Administrator's address of June 25, 1933 and statements that the Cotton Textile Code was not to be considered a precedent, the industry had submitted a code which provided that "no individual will be employed in excess of forty (40) hours in any one week except as exempted in the Act."(***) The employers in the industry who, two years before, had gone from their customary forty-eight (48) to a forty(40) hour week, recommended no further reduction. In spite of Section 206-A of the Act to the effect that the hours of labor were to be reduced "where practicable and feasible" to thirty (30) hours in any one week on "all contracts let for construction projects and all loans and grants" made purusant to the public works section of the NIRA, and of the fact that a large proportion of the shipbuilding industry's anticipated activity was due to funds

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(*) Ibid., October 6, 1933, draft.

(**) National Industrial Recovery Administration hearing on Code of Fair Practice and Competition presented by the fire extinguishing appliance industry - October 23, 1933, p. 12.

(***) New York Times, July 13, 1933. The Code was submitted July 12.

appropriated under the NIRA, the industry contended that the thirty (30) hour week should not apply but that the forty (40) hour provision be substituted.

In fact, at the time of the public hearing the industry went a step further and proposed instead of a straight forty (40) hour week, the following:

> "No employee on an hourly rate may work in excess of an average of forty (40) hours a week, based on a six months period. If any employee on an hourly rate works in excess of eight hours in any one day, the wage paid will be at the rate of one-and-one-half ($1\frac{1}{2}$) times the regular hourly rate for such time as may be in excess of eight hours. On the Great Lakes during the navigating season an exception to the rule regarding overtime is permissible. . . . . The forty (40) hour week will not apply for a period of six months to those employees of the Shipbuilders engaged in designing, engineering and in mold loft and order departments and such others as are necessary for the preparation of plans and ordering of materials to start work on new ship construction." (*)

This code was the first one considered which proposed a definite provision for the averaging of hours. Also, occupational exemptions for which the Cotton Textile Industry Code furnished a precedent were presented in two forms: (a) employees working on a basis other than an hourly rate were entirely excluded; and (b) specific exemptions were provided for other employees.

1. Employer's Statements

The proposal for a basic forty (40) hour week was defended by the shipbuilders and shiprepairers on the ground that the shipbuilding program contemplated by the NIRA would not only absorb their

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(*) National Recovery Administration, Transcript of Proceedings, Shipbuilding Code Hearing July 19, 1933, pp.9-10

It is interesting to note in this regard that Mr. G. M. Bugniazet, Secretary of the International Brotherhood of Electrical Workers addressed a letter to President Roosevelt on July 27, 1933, in which he declared that the Union had worked diligently on the preparation of briefs, but that at 6 P.M. preceding the day for the scheduled hearing the Union officers "learned with amazement that the original code had been withdrawn and a substitute entered.... It is obvious that appearance on any code published is difficult enough, but making an appearance on a code never read nor seen places opponents in an abject position. Yet the hearing on the substituted code was held as scheduled." N.Y. Times, 7/28/33.

own unemployed but would raise their employment to about fifteen per cent (15%) above the 1929 level. (*) They anticipated scarcity of skilled men, which, they claimed, would hamper construction work in the shipbuilding industry and in the United States Navy. (**) Both the industry and the representatives of the United States Navy disapproved the six hour day on the ground of impracticability and impossibility because: (1) a six hour day prevented continuous operation; (2) work could not be completed within a six hour period; (3) the supervisory staff could not be proportionally expanded and consequently its load would be too heavy; (4) a six hour work day would encourage labor turnover; (5) and increase the cost of merchant shipbuilding by thirty-three percent (33%); (6) the industry could not survive ordinarily on a thirty (30) hour week; (7) the contracts for public construction would extend beyond the two years of the Act and the removal of the emergency would create problems of "disturbance and unhappiness;" (8) a six hour work day would complicate the housing situation, intensifying temporary concentration of labor; (9) employment even under the forty (40) hour week would be increased some 250 percent because of the volume of government contracts; (10) the industry was adapted to the forty (40) hour week.(***) Also, representatives of the Navy feared that a shorter work week would excessively increase costs of construction. They considered it undesirable to employ persons "unsuited to the work of shipyards and whose return to their own normal occupations should be the primary objective," and thought that a program of less than forty (40) hours would attract persons belonging to other industries.(****)

This position on a basic forty (40) hour week was the major contention. The averaging provision was argued on the ground of the character of the industry, since "there is a considerable amount of work of an emergency or special type on which only one shift can work and it is necessary either to work occasionally for longer hours or seriously delay the progress of the whole." (*****) The exemption for the planning section was declared to be necessary since "the expedition with which the work on the naval program will be carried on depends upon the ability to prepare plans, order materials and carry out work in mold loft and the completion of this preliminary work determines the time when workmen can start upon the actual construction of the ship."(******)

(*) Ibid., p. 48

(**) This position was supported by Rear Admiral E.S. Land, Bureau of Construction Repair, U.S. Navy. Ibid, p. 98

(***) This consideration was most completely presented by Mr. L.Y. Spear of the Electric Boat Company. Ibid., pp. 50-66; and in the letter of transmittal. N.Y.Times, July 13, 1933.

(****) Testimony of Captain H.L. Wyman, of the U.S. Navy, Ibid., p. 106.

(*****) Ibid., p. 17.

(******) Ibid., p. 18

Special exemption from the payment of overtime in the Great Lakes region was asked because "it has long been the practice of the Great Lakes region to work nine or nine and one-half hours a day," and that they were willing to work not in excess of eight hours in the winter months, but would like the privilege of working nine hours without payment of overtime on repair work in the summer.(*)

2. Labor's Counterproposals and Statement:

Organized labor, represented by the Metal Trades Department of the American Federation of Labor, countered the proposal of the shipbuilders and the shiprepairers with recommendations for a thirty (30) hour week with a six hour day and a five day week. It further recommended deletion of the overtime tolerances and substitution of the following clause: "No overtime shall be permitted, except the maintenance and repair personnel and then only in case of extreme emergency. All time worked in excess of scheduled number of hours shall be paid for at not less than double time." (**) Organized labor considered the thirty (30) hour week practical and feasible. It believed that Section 206 of the Act should be applied without modification. Specifically it called attention to the fact that the average work week in the industry was about thirty-one (31) hours, that employment stood at about 47 per cent(-75) of 1929, and that part-time employment was widespread. It contended that the forty (40) hour week would absorb "only a small portion of those who are now out of work in the industry and if overtime work is permitted as freely as employers suggest, those now employed part-time would be able to handle practically all the available work and over, - few of the unemployed would be taken into the shipyards." It maintained that "if hours of labor are to be reduced to provide employment, then overtime must be prohibited except in case of emergencies." It asserted that a program of reemployment should take into consideration not only those employed in 1929 but also "the great majority of the mechanics employed in the shipyards and Navy Yards during the construction period of 1918, 1919, 1920, and 1921 (who) are still in the United States." (***)

3. Administrative Recommendations

These two conflicting recommendations were submitted to the NRA for consideration. On the one hand were the shipbuilders charged by the Administration with the responsibility of submitting a code; and on the other hand organized labor in the shipbuilding industry representing a significant group of workers asking for very different terms of

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(*) Testimony of Mr. W.H. Gerhouser, President of the Great Lakes Shipbuilding and Repair Association, pp. 68-71

(**) Testimony of Mr. J. A. Franklin, Metal Trades Department of the American Federation of Labor, July 20, 1933. Ibid., p. 123

(***) Testimony of F.A. Franklin, Ibid., pp. 125-129 and Mr. Frey, p. 164. It may be indicated that several representatives of employees appeared in support of the forty (40) hour week. They included Mr. J.W. Mullin on behalf of the employees of the New York Shipbuilding Co., Camden, N.J., p. 216. Mr.W.G. McDermott representing the employees of the Fore River Plant of the Bethlehem Corp. of Quincy, Mass. p. 223.

employment. In this situation the Administrator offered the following solution: "it has been our purpose to gauge the hours of work per week at a figure that would absorb the labor which is normally attached to a particular industry. You can see very well that on that formula the more active and more nearly normal the operations in industry are, the longer the work week, and vice versa. This industry seems to be on the verge of a program which would take a great many men who are normally listed as in the shipbuilding crafts. However, it is subject to the modification that in the building trades there are a great many crafts whose work is applicable to shipbuilding industry. (This industry) probably will be looked to to absorb considerably more than at first glance seems its normal quota of labor."(*)

4. Negotiations

After the public hearings, the Administrator arranged a series of conferences with labor and industry representatives.(**) After discussions of the various proposals by both groups, the Administrator proposed a thirty-two (32) hour week for the industry with no change in the wage provisions. The industry refused to agree to this proposal though the representatives of organized labor accepted it.(***) During the conferences on the second day a solution was found.(****) It provided a thirty-two (32) hour week for shipbuilding for the United States Government and an average thirty-six (36) hour week based upon a six months period with a maximum forty (40) hour week for merchant shipbuilding and shiprepairing.(*****) This compromise, according to the press, resulted from the fact that "General Johnson threatened to recommend suspension of the Navy's building program if they (the shipbuilders) adhered to their program and that this position made the compromise more amenable to the shipbuilders."(******)

The problem of hours on government shipbuilding involved the Navy Department and was, therefore, not completely settled until Secretary of the Navy Swanson had discussed the matter with the President. It is reported that after this discussion the Navy Department "acquiesced in the thirty-two (32) hour proposal"(*******) With this matter settled, the

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(*) Ibid., July 19, 1933, p. 3

(**) These were held on July 22 and July 23, 1933.

(***) Code History for the Shipbuilding and Shiprepairing Industry, pp. 58-61; Washington Star, July 23, 1933.

(****) The Administrator had insisted upon a thirty-two (32) hour week, but at a conference with Deputy Administrator Whiteside after a general meeting in the morning the final provision was developed.

(*****) Code History op.cit. pp. 58-61.

(******) New York Times, July 25, 1933.

(*******) Salt Lake Tribune, July 26, 1933.

code was approved by the President on July 26, 1933.

The final provision as adopted in the code was as follows:

"Merchant Shipbuilding & Shiprepairing: No employee on a hour rate may work in excess of an average of thirty-six (36) hours per week, based upon a six months' period; nor more than forty (40) hours during any one week. If any employee on an hourly rate works in excess of eight hours in any one day, the wage paid will be at the rate of not less than one and one-half (1½) times the regular hourly rate, but otherwise according to the prevailing custom in each port, for such time as may be in excess of eight hours.

"Shipbuilding for the United States Government: No employee on an hourly rate may work in excess of thirty-two (32) hours per week. If any employee on an hourly rate works in excess of eight hours in any one day, the wage paid will be at the rate of not less than one and one-half (1½) times the regular hourly rate, but otherwise according to the prevailing custom in each port, for such time as may be in excess of eight hours.

"Exceptions: For a period of six months exceptions may be made in the number of hours of employment for the employees of the shipbuilders engaged in designing, engineering and in the mold loft and order departments and such others as are necessary for the preparation of plans and ordering of meterials to start work on new ship construction, but in no event shall the number of workers worked be in excess of forty-eight (48) hours per week, and in no case or class of cases not approved by the Planning and Fair Practice Committee provided for in Section (8)."

These negotiations showed that a concession was obtained from the industry for a reduction of hours to thirty-six (36) per week for private shipbuilding and thirty-two (32) for government shipbuilding. In the latter case they were relieved of the requirements of the Act. In the negotiations labor, industry and Government were the bargainers. The final compromise was worked out by the Administration and the shipbuilders with labor acting chiefly as adviser. The Administration had a strong weapon, the naval program, with which to bargain. This Shipbuilding Code also was the first to adopt a provision for the averaging of hours. It established the eight hou day. It granted a six months' exemption for employees preparing plans and ordering materials with the qualification of a forty-eight (48) hour maximum and approval by the Planning and Fair Practice Committee.

B. Petroleum Industry

The petroleum industry considered problems of production and trade practices to be most important in drafting its code. The code formulated jointly by representatives of the American Petroleum Institute, including many independent producers and large oil companies, and by the Marketing-Refiner Natural Gasoline Association added to Section 7 (a) the following clause: "During the depression the petroleum industry has maintained a relatively high ratio of employment. To a large extent it has pursued the 'Share-The-Work' policy and has maintained a relatively

high schedule of wages. Existing wage schedules should not be reduced, but both employment and wages should be increased as soon as business conditions permit." (*) Because of these rather vague provisions, the Administrator was reported to consider the code unsatisfactory and to "demand that the proposed oil code be made more specific regarding hours of labor and wages. (**)

As a result of the Administrator's insistence, the sponsors of the code, through the Executive Committee of the American Petroleum Institute, presented it on July 12, 1933 with provisions concerning wages and hours of labor included. The terms, however, had not been discussed by the Board of Directors of the American Petroleum Institute with the constituent associations. (***) The code as proposed prescribed for all employees "of the Petroleum Industry, except executive and their immediate clerical forces, and pumpers on stripper wells, and others on isolated properties" an average of not more than forty (40) hours per week. The Associations indicated that this averaging process was necessary since "it may be necessary to work employees more than forty (40) hours per week on occasion, but the weekly work for each employee for each six months' calendar period shall not exceed an average of more than forty (40) hours per week." (****)

(*) The Wall Street Journal, July 13, 1933.

(**) Houston Press, June 29, 1933.

It is also of interest to note, the attitude expressed by one leading member of the industry, who was amazed at General Johnson's attitude; "The industry is concerned by the emphasis which is being placed upon employment and wages by the National Administrator in codes dealing with other industries heretofore presented. The Recovery Act emphasizes collective bargaining, but the Administrator apparently is urging industries which present codes to agree with him on matters affecting labor instead of agreeing with the employees of such industries. Before employers and employees have had an opportunity to reach an agreement by collective bargaining, it is obviously inconsistent with the Act for the National Administrator to insist that an industry accept prescribed conditions relating to labor. Such a course is inconsistent with mutual agreements between employers and employees relating to these subjects. Rules prescribed by the Administrator in this manner may be unsatisfactory to both employers and employees and may prevent, instead of promote collective bargaining". (Statement by C. B. Ames, Chairman, Board of Directors, Texas Company, Journal of Commerce July 6, 1933.)

(***) New York Times, July 15, 1933.

(****) Ibid.

These proposals were modified by the industry representatives at the public hearing to a forty-eight (48) hour maximum week. (*) Even this longer week was expected to reduce working hours enough to increase employment nearly twenty-five per cent (25%), or from the actual working force of 1,025,000 up to 1,265,000 persons. Any other basis of operation than forty (40) hours was objected to as impractical as the industry operated continuously "with equipment, machinery and men working through the twenty-four hours of the day." They claimed that "the reduction to forty (40) hours means not only a tremendous increase in the number of employees with particular reference to those required to handle the shift and tour jobs all of which required highly trained men, but it also means the tremendous increase in the expense and pay roll cost of many companies and individual engaged in the business who already are on the verge of financial collapse." The averaging hours were declared necessary to meet "emergencies." (**)

1. Labor and Independents' Proposals.

The codes proposed by the American Petroleum Institute and its supporters were met by two counter-proposals, one from organized labor and the other from the independent producers and operators. These proposals were similar in many respects in their recommendations concerning hours of work.

Several organized labor groups made proposals, the most detailed coming from the Oil Workers International Union. It proposed that "no employee in the producing, pipe-line transportation or the refining branches of the petroleum industry, except executives and their immediate clerical forces shall be employed in excess of thirty hours per week, nor more than five days in any one calendar week, nor more than six hours in any one day, save in cases of emergency. In such emergency cases, all time workers in excess of the scheduled maximum number of hours per day or week shall be regarded as overtime and shall be paid for at the rate of not less than double time." (***) This recommendation was supported by testimony that 39.6 hours constituted the average in the petroleum refineries for the first half of 1933 and 42.6 hours for the producing branch of the industry, while employment in June 1933 had been 58 per cent of the average for 1929. It was, therefore, "calculated that it would be necessary to establish a working week with a maximum of 24.4 hours" to reabsorb the men displaced since 1929. The labor group proposed a thirty (30) hour week and protested the averaging provision since "such a provision may vitiate entirely any maximum hourly provision which might be established." (****) Labor also asserted that

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(*) National Recovery Administration Transcript of proceedings Petroleum Code, July 24, 1933, pp. 3048-3049.

(**) Ibid., pp. 3052-3054.

(***) Ibid., p. 3060. Similar provisions were recommended by Mr. J.N. Davis, representing the Metal Trades Department of the A. F. of L. p. 3096.

(****) Ibid., pp. 3058 - 3066, Statement by Mr. Fremming.

double pay for overtime was the only effective method of checking that practice.

The independents in the oil industry, consisting of twenty-two associations, presented the following proposal: "The employees of the petroleum industry except those who occupy managerial or executive positions and their immediate clerical forces and pumpers on stripper wells, and others on isolated properties will work on an average of not more than thirty (30) hours per week. Provided, however, that employees of retail filling stations will work on average of no more than thirty-six (36) hours per week. Because of the exigencies of the oil industry, it may be necessary to work employees more than said maximum hours on occasion, but the weekly work for each six months' calendar period shall not exceed an average of said minimum hour per week."

2. Administrative Assistance in Adjustment of Differences.

After hearing the proposals, counter-proposals and arguments, the Administrator concluded that "the various suggestions are very far apart and they do not really represent any opportunity to get together on some kind of an agreement." He therefore proposed the organization of three committees, one for the stripper wells and production, another for refining and pipe lines and a third for marketing and distribution, each committee to consist of an equal number of employer and employee representatives. The former were chosen by the Petroleum Institute and independent organizations, while the latter, selected by the Labor Advisory Board consisted of representatives of the Oil Workers International Union and of the staff of the appointing Board. The committees were under the chairmanship of a representative of the Administration.(*) Committee discussion soon effected a compromise. An agreement upon a thirty-six (36) hour week was reported in the production and refining divisions and a forty (40) hour week in the marketing division of the industry. (**) These proposals were submitted on August 1, 1933 when the revised codes were considered. No substantial objections were raised to the hours provisions, though some questions concerning wages and adjustments appeared. (***) The differences were mostly ironed out in the preceding conferences.

This was not true of the production provisions. Consequently, there was delay in development of the production and trade practice provisions of the code. A PRA agreement covering the labor provisions was approved before the code itself. Issued on August 8, 1933, the President's Reemployment Agreement provided an average thirty-six hour week for

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(*) Ibid., pp. 3113-3121.

(**) Houston Post, July 26, 1933.

(***) Transcript of Hearing. See Petroleum News, August 9, 1933.

production employees, forty (40) hour week for marketing operations and a forty-eight (48) hour week for filling and service station employees.(*) These terms, largely settled upon in the post-hearing conferences, were finally incorporated in the general Petroleum Code, approved August 19, 1933 and were widely accepted by the industry.

(*) Section 1. In drilling, production, refinery and pipe-line operations, the maximum hours for clerical employees shall not exceed 40 per week and the rate of pay for each geographic division shall not be less than the minimum stated in Section 2. All other employees in these operations, except executives, supervisors, and their immediate staffs and pumpers on "stripper" wells located so as to make relief impracticable, shall work not more than 72 hours in any 14 consecutive days, but not more than 16 hours in any two days.

Section 2. In market operations all employees (other than those employed in filling or service stations, garages, or other institutions which sell gasoline to the public) including clerical, but excluding executives, supervisors and their immediate staffs, and outside salesmen shall work not more than 40 hours per week. The minimum rates for such employees in each of the geographic divisions above specified shall be as follows:

Section 3. No filling or service station employee, nor any employee of any garage or other institution selling gasoline to the public shall work more than 48 hours per week.

C. Cast Iron Soil Pipe

The Cast Iron Soil Pipe Industry Code Illustrated the relation of labor provisions to the industry's desire to set up trade practice controls. At the public hearing on August 2, 1933, the industry proposed a thirty-hour week for factory labor and a forty (40) hour week for clerical workers. Those presenting the code stated that "it is their intention to continue this (share the work) policy and as demand for the products of the industry shall increase, they propose to give employment to the maximum number of employees rather than request an extension of the maximum working hours". (*)

The thirty (30) hour week was recommended because the industry was suffering from over-production and "the present percentage of operating capacity of the industry is only twenty-one per cent (21%). It would therefore be inconsistent to propose a maximum working week greater than thirty (30) hours as provided in the code." (**) The limitation of both working and production hours, which were identical in the code, was suggested in order to control production and to prevent the monopoly of the orders by a few concerns. Organized labor did not protest these hours' provisions. However, in conference labor and the employers agreed to lower working hours to twenty-seven (27) per week. This was satisfactory to the employers since in the revision of the code they had specifically limited production to the maximum hours of labor permitted in a single shift.

D. Motor Vehicle Retailing Industry

The motor vehicle retailing industry represented certain characteristic differences. No labor organization was present to offer proposals, the Labor Advisory Board staff representing the workers in the negotiations. Also, it represented a service industry. Furthermore, the code presented proposed a forty-eight (48) hour week.

The code resulted from regional conferences held among automobile dealers during the latter part of June and early July. Their major interest was in used car practices. With respect to hours of labor they showed considerable unanimity. The Denver concerns (***) and the Maryland Automobile Trade Association (****) adopted a basic forty (40) hour week.

(*) National Recovery Administration Hearing on Code of Fair Practices and Competition, Presented by the cast iron soil pipe industry, August 2, 1933, p. 61.

(**) Ibid., p. 63.

(***) Baltimore Sun, July 19, 1933.

(****) Denver Post, July 18, 1933.

Their example was followed by the Automobile Trades Association of Greater Kansas City (*) and the Michigan Automotive Trade Association. (**) However, the final code, as drafted by the National Auto Dealers Association in St. Louis on August 18, 1933, provided for a forty-eight (48) hour week. (***) In spite of strong sentiment for a straight forty (40) hour week, "portions of the country where there is a summer peak and a slack winter or the reverse sought to obtain a forty-eight (48) hour maximum. In view of this uncertainty there was a disposition to leave "the matter of hours of labor to the Administrator." (****)

The code was submitted to the Administrator on September 1, 1933. Informal conferences were held with the various Advisory Boards but no significant changes were made. The code as it went to public hearing contained the following provision respecting hours of employment:

> "No employee (except outside salesmen and watchmen) shall be employed for more than 48 hours in any one week... The maximum hours fixed in the foregoing paragraph shall not apply to employees in a managerial or executive capacity who now receives $25.00 a week or more; to employees in a supervisory capacity or engaged in technical work; to employees engaged in energency repair and maintenance work on automobiles for which, due to seasonal climatic conditions, there are in certain localities insufficient trained workers available to take care of consumer demands; in such localities sixty hours shall not be exceeded in any one week. It is understood, however, that the average in any six months' period will not be over forty-eight (48) hours."

The reason given for the provision was the seasonal nature of the industry and frequency of rush jobs. It was felt "that a maximum of forty-eight (48) hours per week will take care of all conditions of employees and car owners and the peak and valley conditions of our work be generally averaged to the point where it will not be a hardship to anyone concerned." (*****) A slight modification introduced at the public hearing raised the exempted class of executive from a $25.00 to $30.00 minimum. (******)

(*) Kansas City Journal-Post, July 20, 1933.

(**) Wall Street Journal, July 24, 1933.

(***) Chicago Tribune, August 12, 1933.

(****) Detroit News, August 20, 1933.

(*****) National Recovery Administration hearing on Code of Fair Practices and Competition, Presented by the motor vehicle retailing trade, September 18, 1933, p. 1516.

(******) Ibid., p. 48.

Labor's case at this hearing was presented by a staff member of the Labor Advisory Board. In presenting labor's case, he did not stress the trade union position on the thirty (30) hour week, but rather the precedents developed in NRA codes. This represented a departure in policy and tactics already evident even in arguments at code hearings. In place of the original proposals to reduce hours there was growing tendency to substitute measures conforming with the pattern which was being developed. In this case, a forty (40) instead of a forty-eight (48) hour week was proposed, with a tolerance of ten per cent for watchmen, and exemption up to forty-eight (48) for emergencies with corresponding overtime payment at the rate of time and one-half (1½).(*) The argument presented on behalf of labor was that "thousands of automobile dealers are now operating their sales service, office and garage departments on the basis of forty (40) hour maximum for employees" under the PRA. It was further claimed that since the 1931 average hours in the industry was 51, the forty-eight (48) hour week meant a reduction of only three hours per week or less than six per cent of the average obtained in 1931. Since the "1931 average includes the hours of many employees...exempted from the restrictions under the proposed code...the actual reduction in hours that would be effected by the proposed schedule would be even less than four per week on the average."(**) Clearer difinition of hours of work was recommended in order to avoid ambiguities. The forty (40) hour week was accepted as reasonable since "it conforms to the standard established in many approved and submitted codes." (***)

Informal hearings after the public hearing offered opportunity for consideration of the various proposals. Further discussions led to agreement to reduce hours to forty-four (44) per week. As finally approved the code provided in Article III, Section B, paragraphs 2 and 3 as follows:

> "No employee (except outside commission salesmen and watchmen) shall be employed for more than 44 hours in any 1 week. These maximum hours refer to the availability of the employee in the shop or premises of the employer at the latter's request whether or not the employee is actively engaged in specific tasks throughout these hours. All places of business shall be kept open not less than 52 hours a week, unless such hours were less than 52 hours per week before July 1, 1933, and in which case hours shall not be reduced at all.
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> "The maximum hours fixed in the foregoing paragraph shall not apply to salaried employees in a managerial, executive, or supervisory capacity who receive $30.00 per week or more."

III Hours Determined by Collective Bargaining

A. Coat and Suit Industry

In the coat and suit industry, unlike the industries described above, the schedule of hours of employment resulted from the negotiations

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(*) Statement of L.H. Seltzer, Ibid., p. 67
(**) Ibid., p.70.
(***) Ibid., p. 74

of industry and union representatives under government supervision. There resulted the shortest hour schedule for private industry of the first five codes. The industry centered in New York City where about eighty per cent of the total annual output was produced and distributed. There terms of employment had been fixed by collective bargaining for nearly two decades. An agreement between the International Ladies' Garment Workers Union and the employer organizations had terminated July 1, 1933 and negotiations for its renewal had been fruitless. The employers had wanted to establish a piece-work system but the union had rejected the suggestion.(*) In the meantime, negotiations with NRA for a code were begun and all parties turned to it for a solution.

The employers proposed a forty (40) hour week in their code filed July 13, 1933 by the three organizations in the industry.(**) The union responded with a counter code calling for a thirty (30) hour week and preparations for a general strike.(***) The employers' argument was based on the estimate of three million hours' overtime worked in the industry in 1932. They contended that elimination of this overtime would abolish existing unemployment in the industry, then estimated at 5,000. They feared that a shorter work week would create scarcity of employees, "artifically high wages" and consequent high costs.(****) The union maintained that the forty-hour week had long been customary and would not effect unemployment. It proposed a thirty hour week on the ground that only half of the 40,000 coat and suit workers were fully employed and that considerable reduction in hours was necessary to meet the unemployment situation at all. It averred that shorter hours and the elimination of overtime would permit realization of the aims of the Act.(*****) Midway between the position of the employers and the union was one independent employers' organization's proposal for a thirty-five hour week.(******) A Cleveland employer stated that the 40 hour week would have no effect on employment in that city.(*******)

The conferences following the public hearing discussed among many issues those relative to the hours of work. Agreement was difficult and negotiations at one time broken seemed impossible, with a strike threatening.(********) The problem of the hours of work was resolved by the negotiations between the employer organizations and the unions. Other issues, however, including the limitation of contracts and responsibility for standards in outside shops, were undecided. Agreement was finally obtained and the code was approved by the President on August 4, 193

(*) International Ladies' Garment Workers Union - Report of the General Executive Board to the 22nd Convention, Monday, May 28, 1934, Chicago, Illinois, pp. 25-26.

(**) New York Times, July 14, 1933.

(***) New York Times, July 17, 1933.

(****) Testimony by Mr. Maxwell Copelof. Coat and Suit Industry Transcript of Public Hearing, d ted July 20, 1933, pp. 29-51, (Morning). Release No. 73, Section 2, Morning.

(*****) Testimony of Mr. D. Dubinsky, Ibid., pp. 10-13, July 21, 1933 (Morning)

(******) Testimony of Mr. Karl Blandstein, Ibid., Vol. I., p.86. July 20, 1933.

(*******) Ibid, Testimony of A. Printz, p. 79.

(********) New York Times, July 26, 1933.

In its final form it provided for a thirty-five hour week for manufacturing employees with specifically designated work hours. Non-manufacturing employees were governed by a 40-hour week. Overtime was prohibited except that the Administrator was permitted to "grant any extension of hours in the busy season." (*)

The code as approved became "the basis for collective agreement with employers." The negotiations had resulted from collective bargaining between the employer associations and the unions. The unions considered the thirty-five hour week "a tremendous achievement for a seasonal industry" and it was the shortest work week established in any industry at that time.(**)

B. Men's Clothing Industry

In this industry negotiations for a code began in May, 1933 between the manufacturers and the Amalgamated Clothing Workers Union, while Congress was still at work on the legislation. Progress was expected to be rapid. However, the formation of a national trade association - the first in the industry - precipitated the creation of a strongly opposed minority association of non-union manufacturers.(***) Each association presented a code, the first resulting from collective bargaining, the second without labor paticipation. Because of the respective strengths of the associations, the outcome could not be doubtful. This large issue between industry groups as to collective bargaining served to subordinate the bargaining on the details of code provisions.

The issue between the associations came to a head at two points: control of the code administration, and wages above the minimum. The code of the majority group was practically agreed to by organized labor when presented July 19, except for the length of the work week. Both codes provided a 40-hour week. The union asked for 35 hours. Previous union agreements in the industry had set a 44-hour week, so that the union was asking a substantial reduction.

At the public hearing, July 26, 1927, the majority association supported statistically its contention that a 40-hour week was the least the industry could operate upon without a labor shortage. The union, on the contrary, estimated that the 40-hour week could reemploy only a small part of the 50,000 idle workers. It argued that total man-hours worked by those who worked in excess of the 40-hour limit in the fall season of 1932 were 134,511, equivalent to 3,363 wage earners working 40 hours per week. On the same basis of computation a 35-hour week would afford employment to 11,981 workers. These figures, of course, took no account of

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(*) N.R.A. Codes of Fair Competition, Vol. I, p. 53 - no such exemptions were asked by the code authority.

(**) Report. Op. cit. p. 25

(***) The majority association had non-union employers in its ranks. The By-laws of the minority association forbade admission to it of manufacturers who had agreements with the Amalgamated Clothing Workers of America. See Men's Clothing Code Report transmitting code, p. 11.

partial employment in this industry, where in union factories equal distribution of work is the rule. The union brief, however, pointed out that 54.8 per cent of all wage earners worked 40 hours or less in the fall of 1932, while over 32 per cent worked 35 hours or less.(*)

The union position was supported by a study prepared for the Administration by the Division of Research and Planning. The conclusion of this report was that the unemployed "cannot all be reemployed either on a 40-hour week maximum or a 35-hour week maximum, unless there is a considerable increased demand. A 40-hour maximum may give employment to 6,150, if the employed workers do not work more than the average of 27.5 hours per week worked in 1932. A 35-hour maximum may give employment to 19,504 people if the spread of work remains the same."(**)

In the prolonged controversy between the two industry groups which continued after the hearing, the hours controversy and its adjustment were obscured. The final code set a 36-hour week, 8-hour day, with no overtime allowance. A special arrangement of overtime for small divisions of the industry working on special order business - tailors-to-the-trade and uniform manufacturers - was agreed to, the number of hours and weeks to be determined each season by the code authority.

In the final event, the majority having reached its agreements on all points by collective bargaining, the Administration accepted the resulting code as the code for the industry and it was approved August 4, 1933. It gave to the recalcitrate minority, which at length in the process of industry organization represented the employers of only 25,000 workers, more than its proportionate share of representation on the code authority as a peace promoting effort.

C. Dress Industry

The results gained by the union in the dress industry were remarkable in that organized labor's loss of strength during the depression years showed in this industry particularly. A new industry, growing rapidly in volume throughout the depression, it was being decentralized in location and entering new fields of production through the use of cotton and rayon. It was less stabilized than the long established coat and suit industry. The result was a chaos in prices, high mortality of business units, and non-observance of existing union agreements. The International Ladies' Garment Workers Union had passed through a crisis of dual unionism; but in the spring of 1933 it was pulling its forces together successfully to take advantage of the pending recovery legislation. Its agreements in New York City were expiring and it hoped to achieve improvement of terms and enforcement of a new agreement under the new machinery.

A new National Dress Manufacturers' Association was formed in May 19 and negotiations started with this and several other associations

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(*) Brief presented by the Amalgamated Clothing Workers of America at Public Hearing July 26-27. Men's Clothing Code History, Vol. B.

(**) Material bearing on Men's Clothing Industry. Morris Kolchin. Division of Economic Research and Planning, August 10, 1933, p.33.

representing inside and contracting shops and other special interests. Four or five codes were submitted, one in June 1933; the others in July. The codes were presented by the predominantly New York Associations, and were all identical as to hours, asking a 40-hour 5-day week, and expressly forbidding overtime. A code submitted by a California association proposed merely to operate under the California hour law, 48 hours per week, 8 per day. A Chicago group proposed a 40-hour week with 12 weeks of 46 hours, and a minimum wage of 35¢ an hour. (*)

The three codes with identical hour provisions were undoubtedly based on some negotiations with the union, but the union was dissatisfied with their terms. There seems also to have been an inclination on the part of the associations to let the code making process take the place of a collective agreement. Meanwhile, the Administration, which it must be noted was extremely helpful in adjusting difficulties in forming this code, was negotiating with all the groups and with labor, and preparing a combined code from all those submitted, with a 40-hour provision. A hearing was set for August 22.

About a week before the hearing date the union called a general strike in New York City. This strike was effective, and well timed.(**) Mr. Grover Whalen, NRA director in the New York metropolitan area, came into the situation as mediator, apparently at the request of the deputy administrator handling the code. At a conference with the industry at the Hotel Pennsylvania on August 18, 1933, he delivered a message from President Roosevelt urging the industry to settle its difficulties. The National Association of Dress Manufacturers replied by telegram to the President that same day as follows:

> "At a meeting of our 500 members this mornining there was conveyed to us by the Hon. Grover Whalen a message from you urging industry-wide adoption in the dress field of the principle of collective bargaining with labor. Actuated by our sincere desire to cooperate with your recovery program in a manner thoroughly acceptable to you our membership voted unanimously to authorize the Board of Governors to proceed in formulating collective agreement through conferences with the International Ladies' Garment Workers Union. It is our hope that such negotiations will facilitate the formulating and issuance of a recovery code for the industry directly after the hearings on this code in Washington on Tuesday. This association was formed in May following your radio address calling upon industries to organize to foster economic rehabilitation. Our sole purpose was to prepare a recovery plan for this trade in collaboration with the government. If this aim can be more effectively achieved through a collective labor agreement we readily accept that procedure."(***)

(*) These codes are to be found in Central Record Section: Dress Code History, Vols. A. and B.

(**) In this strike pickets carried placards reading "Let's write our code on the picket line."

(***) Central Record Section. Vol. A. for the dress manufacturing industry.

On the preceding day, August 17th, Mr. Whalen had brought both sides together at a conference, but some groups had expressed themselves as uncertain that a collective agreement was necessary to regularize the admitted disorder of the industry. Mr. Dubinsky, President of the International Ladies' Garment Workers Union, stated that the union was the only force capable of policing the whole industry and making the code effective. At that time he asked: a collective agreement, the 30-hour week, wages restored to the scale of a normal not a depression year, and contractor regulations. (*) The hearing was postponed one day for completion of the agreement, which was signed on August 22, 1933. This called for a 35-hour week.

The public hearing developed substantial agreement on the question of hours. Later difficulties that delayed code approval to October 31, 1933, turned on the contractor jobber regulations largely.

IV. CONCLUSION.

Only nine of the first one hundred approved codes had their basic hours reduced from those originally proposed by management. Six of these were among the first twenty approved codes. The other three cases of reductions on basic hours followed precedents established in other codes, or resulted from collective bargaining or effective bargaining by a labor adviser in the case where unusually long hours were proposed. The early drive for shorter hours effected the reduction of hours in these industries.

In the case of the lumber industry, Administrative pressure to secure a forty hour week was successful after a long series of concessions. The fire extinguishing industry agreed to shorter hours because of its close tie-up with the motor fire apparatus industry, which had adopted the thirty-five hour week in the automobile manufacturing code. In the shipbuilding industry, organized labor and the government reduced hours because both groups were determined to have shorter hours and the Government possessed as a bargaining leverage the public funds for government contract. In the petroleum industry, labor with the aid of the independents in the industry succeeded in reducing hours. Management's desire for production control in the cast iron soil pipe industry conspired to set maximum hours at twenty-seven. In motor vehicle retailing, an unprecedented long hours schedule was reduced to forty-four by the efforts of the labor adviser. Quite different were the methods used in the coat and suit, men's clothing and dress industries.

A vigorous organization campaign to consolidate labor's strength and bargaining power to code making enabled the unions to present a formidable show of power. Their influence in the chief manufacturing centers permitted them to carry on direct negotiations with the employers. Through the use of the threatened strikes at crucial moments they succeeded in bringing substantial and effective reductions of hours.

With the exception of cast iron soil pipe and motor vehicle retailing industries the hours originally proposed were forty. The two exceptions originally proposed thirty hours and forty-eight respectively. The hours finally established in the codes varied. The shortest basic hours were in the cast iron soil pipe industry (27). Three codes provided for thirty-five hours, (fire extinguishing, coat and suit, and dress) and three, thirty-six hours (shipbuilding, petroleum and men's clothing), one, forty (lumber and timber products) and one, forty-four hours, (motor vehicles).

(*) Central Record Section, Vol. A. for the dress manufacturing industry.

CHAPTER XII

APPROVED CODES WITH LONGER HOURS THAN ORIGINALLY PROPOSED

In contrast to these industries in which the code basic hours were lower than originally proposed, is a second group of six industries in which basic hours were increased during negotiations. Considering the goal of the Administration to have been shorter hours, evolution of policy appeared in the modifications which lengthened them.

I. Bituminous Coal Industry

The bituminous coal industry negotiations illustrated the resistance even in unionized industries to reduction of hours below forty. The United Mine Workers had long sought the 6-hour day and and five day week.(*) It had sent out organizers into every unorganized field soon after the National Industrial Recovery Act was under serious consideration in Congress, and had secured membership claimed to embrace well over 90 percent of the total tonnage.

A. Original Code

The union and "a group of bituminous coal operators operating in the States of Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Michigan, Iowa, Kentucky, Arkansas, Oklahoma, Colorado, Montana and Wyoming"(**) began a series of conferences for the development of a code during the first two weeks of July, 1933. The first took place in Chicago, the rest, in Washington, D. C. A code was developed jointly by the employer and employee groups, differences arising only with respect to the length of the working day. The operators proposed an eight hour day, a thirty-two hour week for one six-months' period and a forty hour week for the second, with a yearly average of thirty-six hours.(**) The United Mine Workers proposed a

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(*) American Federation of Labor Weekly News Service, (July 22, 1933).

(**) National Industrial Recovery Administration Hearing on Code of Fair Practices and Competition presented by bituminous coal industry, August 10, 1933 - p. 222.

(***) The code provision read as follows:

"Eight hours work at the usual working places exclusive of lunch period shall be the maximum per day for all employees whether they shall be paid by the hour or paid on a tonnage basis except in case of accidents which temporarily necessitate longer hours for those employees required on account thereof, and excepting supervisors, clerks, and

(Footnote continued)

thirty hour week based on a six hour day and five day week. Both sides agreed jointly to sponsor the other terms and to present arguments supporting their respective positions on hours. The code was presented to the Administration on July 18, 1933 by the industry representative with the statement that it had been prepared "in conformity with the provisions of paragraph (B) of Section 7 of the NIRA.(*)

B. Other Proposals

Other codes were presented by various regional groups and by the non-union operators. These generally proposed a forty hour week, although one recommended a forty-eight hour week.(**) Actually the controversy centered about the thirty or forty hour week, or moreaccurately, the six or eight hour day. The employers' argument concerned regional differentials and administration.

C. Management's Position

Management's approval of the eight hour day and opposition

(***) Continued

technicians, and also except that small number of employees at each mine whose daily work includes the handling of man trips and those who are required to remain on duty while men are entering or leaving the mine.

"No employee shall be employed in excess of thirty-two hours in any calendar week during a twenty-six consecutive weeks' period, nor in excess of forty hours in any calendar week during the other twenty-six consecutive weeks of such twelve months periods; provided, however, that an employer may elect to operate any mine on a schedule of employment not to exceed thirty-six hours per week throughout the twelve months' period. Exceptions shall be made in case of accidents which temporarily necessitate longer hours for those employees required on account thereof, and of that small number of employees whose daily work includes handling of man trips and those who are required to remain on duty while men are entering of leaving the mine."

(Note: Representatives of the United Mine Workers reserved the right to present arguments at the proper time to the Administration for the six hour day and the five day week instead of the eight hour day as set out in the above paragraph.)
United Mine Workers Journal, V. 44, p. 4, August 1, 1933.

(*) National Industrial Recovery Administration, Hearing on Code of Fair Practices and Competition, Presented by George P. Harrington on behalf of the bituminous coal industry, Vol. II, p. 225.(August 10,1933)

(**) Ibid. Vol. III (August 11, 1933), Statement of Rice W. Miller, Representing the Coal Producers' Association of Illinois, p. 538.

to the six hour day was based upon anticipated excessive increase in employment and increase in labor costs, beyond the industry's capacity to pay (*), in view of competition from other fuels (**). It averred that the shorter working day would mean not merely higher wages, but would increase other expenditures. For example, the cost of preparing a coal mine for a shift's production was said to increase inversely with reduction in hours. Attention was also called to the fact that the transportation costs per day were unchanged. Furthermore, while workers would lose as much time annually under the shorter work day, it was declared that the per diem costs of this lost time would increase inversely with the reduction in the number of hours. One operator stated that the periods of non-production would be the same regardless of the length of the shift. (***) Other items of overhead, such as royalties, insurance, taxes and fixed expense were pointed out .(****) In addition the fear

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(*) Statement of Mr. F.V.H.Collins, Rocky Mountain Pacific Coal Operators Association:
".....we are confronted on the 8 hour situation, with condition we cannot avoid. Anything that will add materially to the cost of operation in the Rocky Mountain Pacific District must result in coal mining casualty so far as the operator is concerned."
National Industrial Recovery Administration, Hearing on Code of Fair Practices and Competition, presented by bituminous coal industry, Vol. I, p. 162.

(**) Testimony of F. K. Taplan, Central Coal Association:

"I do not claim that it is too much money for one miner to make.....It is a question of whether we can stand any such cost and compete with fuel and with other competitive fuels, and if, in trying to do it, it works out that you had less employment rather than more employment, and that it what the act is created for, then we do not believe that would be a very constructive thing.....If it were not for the competitive fuels, I don't believe we would have any argument against the claim."
National Industrial Recovery Administration, Hearing on Code of Fair Practices and Competition, presented by bituminous coal industry, Vol. II, p. 369. See also testimony of Mr. D. W. Buchanan, Vol. II, p. 368.

(***) Testimony of D. W. Buchanan, National Industrial Recovery Administration, Hearing on Code of Fair Practices and Competition, presented by bituminous coal industry, Vol. II, p. 389.

(****) Testimony of Frank Taplan, Ibid. p. 370, and testimony of D. W. Buchanan, Hearing, V. II, Ibid p. 388.

of the operators maintained that the mining industry had become adjusted to the prevailing eight hour day. Where recognized that a shorter workday was not expected to present managerial difficulties, one operator declared that he "would rather gave an eight hour day". (*) Others maintained that specific physical difficulties would result from changing to a shorter day since "we are all laid out on the 8-hour basis. We equip and size our rooms, make out cuts, arrange our cutting machines, our method of loading and handling, all based in the unionized districts and the other districts upon an 8-hour productive clean up day". (**) Others contended that the industry had developed "an eight hour cycle of operation to fit conditions of mining" and to upset it would mean a "long period of costly readjustment" and "a less efficient method". (***) Reduction of the length of their shift was opposed as an accident hazard, since "explosions in coal mines occur most frequently during changes of shifts." With the increase in the number of starts made, explosion hazards would increase. (****) These sentiments were summarized in the testimony as follows:

> "The eight hour shift in the operation of coal mines is possibly the most important single element in connection with the industry. It has become the standard unit of operation, and any change therefrom must mean decreased efficiency and greater cost in the operation of mines." (*****)

It was even declared that "a change in the entire industry from 8 to 6, or even 7 hours evernight, savors of revolution. I hold that revolutions are always dangerous. Any such change must be made gradually over a period of years." (******)

The operators estimated, on the basis of the customary 48 hour operation of the industry, that the 36 hour average work week throughout the year would increase employment approximately 20 percent "when there is anything like a normal demand for coal ...." This reduction in hours "ought to take care of the biggest part of the unemployment". (*******) It was also noted that "the Administration has considerable time to work these problems out....It might not be a bad idea to try a

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(*) Testimony of Frank Taplan, Vol. II, Ibid. p. 372.

(**) Testimony of F.V.H. Collins, Ibid. Vol. I. p. 163.

(***) Testimony of D.W.Buchanan, Ibid. Vol. II, p. 390.

(****) Testimony of D. W. Buchanan, Ibid. Vol. II, p. 392.

(*****) Testimony of D.W.Buchanan, Ibid, p. 394.

(******) Testimony of Eugene McAuliffe, President of Union Pacific Coal Company, Ibid. p. 410.

(*******) Testimony of Frank K. Taplan, Ibid. p. 268 and p. 369.

36 hour wee in place of 48, and if we found there was still a big surplus, it would not take very long to reduce the working time still further." (*)

While the latter sentiment prevailed among the operators which had participated in the draft of the "Harrington Code", quite another line of reasoning was evident among other groups. The spokesmen for the Northern and Appalachian group of operators contended that it is only by "increased volume of business" that reemployment would really be possible. (**) They asked for a forty hour week.

D. Labor's Position

Organized labor presented its argument for the six hour day and the thirty hour week. It comprised three major points: (1) the eight hours' work underground "at the face" was excessive and the eight hour day was the prevailing normal work day in the industry; (2) a shorter work day would result in decreasing the accident rate and improvement in the health and efficiency of mine workers and such reduction in accidents "would more than offset added overhead costs by the savings of losses which otherwise would accrue to the operator through longer work day resulting in more accidents"; (3) a maximum work week not to exceed thirty hours was necessary to extend employment to available men, check overproduction, eliminate cutthroat competition, and stabilize costs. (***)

E. Negotiations

With the adjournment of the hearings, the problem was to weld the motley proposals into one. To accomplish this the President called into conference on August 17th the representatives of the operators and was reported to have "demanded that they omit the qualification of the collective bargaining provision of the Recovery Act" and insisted upon a single code. (****) At the general meeting beginning on August 18, subcommittees were formed to consider the various differences. However, no progress was made until the open opposition of the non-union operators was cleared away and a joint conference was organized. Independent discussions relating to the Appalachain district beginning on August 24, 1933, facilitated the final solution of the labor issues. (*****) The vigorous drive for unionization of the miners within the region had

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(*) Testimony of Frank K. Taplan, Ibid., p. 370.

(**) Testimony of Mr. Charles O'Neill, Ibid. Vol. I, p. 64.

(***) Statement of John L. Lewis, Ibid. pp. 343-362.

(****) N.Y.Times, August 18, 1933.

(*****) New York Times, August 25, 1933. While there was a larger meeting in the afternoon, a subcommittee was formed consisting of the following persons: Operators J.D.A. Morrow, Charles O'Neill, R.E.Taggard, and Duncan Kennedy; miners John L. Lewis, Phillip Murray, Thomas Kennedy, and Van A. Bittner

finally led the previously opposing operators to accede to the necessity of joint negotiations. The conference was undertaken under the supervision of the NRA. It was believed that once an agreement was written in the form of a contract between the union miners and operators the wording of the code itself would be easy. (*)

However, the conference had no sooner begun than a deadlock appeared. The Administrator then suggested a forty (40) hour week instead of the thirty-six (36) hour average proposal by the operators of unionized areas with the provision that a commission study the possibilities of a shorter work week and report back within six months. The recommendation included elaborate machinery for settling labor disputes and establishing a firm basis of industrial relations. While the non-union operators accepted the proposal regarding hours, they were reluctant about the administrative feature and awaited the action with respect to Section 7(a) in the Automobile Code. (**) When the Automobile Code was adopted with the modified Section 7(a) the question was reopened by certain bituminous coal employers' submission of a code with Section 7(a) modified as in the Automobile Code. (***) However, in the eleventh hour the issues were settled and an agreement was reached providing for a forty (40) hour week. (****)

After the major labor terms were set in the collective agreement for the Appalachian district the labor provisions of the code itself were quickly written. The basic hours developed in the Appalachian agreement were incorporated in the code. The period between arrangement of the basic agreement between organized labor and the Appalachian mine operators and the development of the code was spent in settling the

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(*) General Johnson declared on announcing these meetings: "For the first time in industrial relations in the bituminous coal industry, the leaders of the southern portion of the Appalachian group which produces 70% of the bituminous coal of the United States have, at their own election, sat down in a conference with the officers of the United Mine Workers in an earnest effort to agree on all controversed matters which have bedeviled this vital industry for years ....This conference will proceed by direction of the President under the supervision of the National Recovery Administration which will lay down the program of negotiations and act as mediator throughout."

(**) New York Times, August 27, 1933.

(***) New York Times, August 28, 1933.

(***) New York Times, August 29, 1933.
General Johnson, announced: "Committees of the United Mine Workers and of the operators in the Appalachian bituminous field have reached the basis of an agreement covering the principle points at issue and which this Administration is willing to recommend to the President. This clears the way to the preparation of an acceptable code. No announcement of the provisions can be made until there is an agreement on the actual working of the agreement and the code."

issue of the check-off (*) and the merit clause (**) and the closed shop. (***) In the midst of these discussions, the Administrator announced a code, inviting criticism and giving notice of a public hearing on September 12, 1933. (***) The code contained the following provisions with respect to the hours of labor:

> "No employee shall be employed in excess of thirty-two hours in a calendar week during a consecutive period of twenty-six weeks in any twelve months' period nor in excess of forty hours in any calendar week during the other twenty-six consecutive weeks of such twelve months' period; provided, however, that any employer may elect to operate any mine on a schedule of employment of not to exceed thirty-six hours per week throughout the twelve months' period. No employee shall be required to work more than eight hours in any one day at the usual working places, exclusive of lunch period, whether paid by the hour or on a tonnage basis. There shall be excepted from the foregoing limitations, (a) employees required because of accidents which temporarily necessitate a longer hour for them; (b) supervisory, clerks, technicians and that small number of employees at each mine whose daily work includes the handling of man trips and those who are required to remain on duty while men are entering and leaving the mine. If at any mine the majority of the unemployed workers who are organized in a manner required by Section 7(a) of the NIRA expressed their desire to share the available work with other bona fide unemployed workers of the same mine or a written request to share the work is addressed to the mine management signed by a majority of the employed workers, the number of hours work to be allotted to the unemployed workers shall be determined by conference of the mine adjustment committee, or in case of disagreement by the decision of the District Adjustment Committee and duplicate copies of the decision of the committee shall be furnished to the local mine management and the local mine mine employees duly authorized representatives." (*****)

(*) New York Times September 2, 1933.

(**) New York Times September 7, 1933.

(***) New York Times, September 2, 1933.

(****) New York Times, September 8, 1933.

(*****) New York Times, September 8, 1933.

Meanwhile, the negotiations between the Appalachian operators and the union continued. Proclamation of a code by the Administration had given pause to voluntary submission of a code; while collective agreements in the industry had been delayed on account of the unsettled state of the code negotiations. The operators criticized the NRA for its announced code which they characterized as an attempt to relegate to the background ownership, management and the substitute therefor either by employees or by Federal authorities. "The proposed code bristles with instances of departure from the time-honored supposition that one had a reasonable measure of power and authority over his own holdings. (*)

The public meeting on September 12 was highly charged. The mine workers were threatening strikes because of the delay and the union operators were speaking disparagingly of the administration for yielding to the "Mellon interests" in the Appalachian district. (**) The result of the public hearing was a conference committee which met with the Administrator. A labor committee (***) met with the operator groups to work out the labor provisions of the final draft of the code. Under governmental and Presidential pressure and strike threats in the field, the final draft was made. (****)

(*) New York Times, September 11, 1933.

(**) Philadelphia Record, September 13, 1933.

(***) Consisting of John L. Lewis, Phillip Murray, Thomas Kennedy, Percy Tetlow, and Van A. Bittner.

(****) A Presidential statement was issued after a conference with both groups on the 14th to the following effect:

> "I have definitely outlined the urgent reasons for immediate agreement on the coal code. Without exception the operators representing the major coal producing areas and representatives of the United Mine Workers have given to me their assurance that the code in its present form is for the large part acceptable and that in all human probability this code can be negotiated to a conclusion within the next twenty-four hours - in other words, by Friday night. Furthermore, the wage agreements between the operators and the United Mine Workers are so close to being concluded that the same twenty-four hour period should bring them to a successful end. In view of these assurances I am awaiting the signatures to the code and the agreements."

New York Times, September 15, 1933.

As agreed upon, the code set forth the following provision regarding the hours of work:

> "No employee, except members of the executive, supervisory, technical, and confidential personnel, shall be employed in excess of forty (40) hours in any calendar week after the effective date of the code. No employee shall be required or permitted to work more than eight hours in any one day at the usual working places or otherwise in or about the mine (exclusive of lunch period), whether paid by the hour or on a tonnage or other piecework basis.
>
> "There shall be excepted from the foregoing limitations (a) employees required because of accidents which temporarily necessitate longer hours for them: (b) supervisors, clerks, technicians and that small number of employees at each mine whose daily work includes the handling of man-trips and/or haulage animals and coal in transit and those who are required to remain on duty while men are entering or leaving the mine.
>
> "The foregoing maximum hours of work shall not be construed as a minimum; and if at any time a majority of the employed workers express their desire, by written request to the employer, to share available work with bona fide unemployed workers of the same mine, the number of hours work may be adjusted accordingly by mutual agreement between such employed workers and their employers."

The greatest obstacle in negotiating the code for the bituminous coal industry had proved to be the non-union operators. They had objected to the joint code sponsored by labor and employers for an eight hour day and an annual thirty-six (36) hour average week, proposing instead a forty (40) hour week. They had been unwilling to yield to a shorter than forty (40) hours work week in spite of the Government's proposal of thirty-six (36) hours. The compromise to achieve codification and develop a union contract for the Appalachian district was arranged. This provision called for a forty (40) hour week and a further study of the hours regulations. The requirement for voluntary compliance by employers with the leverage in the hands of significiant groups, resulted in over-riding the previous agreement between labor and union employer group and the development of the compromise.

The Bituminous Coal Code did not meet the union demand for the thirty (30) hour week and exceeded the hours originally proposed by the code jointly sponsored by labor and industry. It continued the forty (40) hour pattern.

II. Gasoline Pump Manufacturing Industry

The gasoline pump manufacturers presented a code with a provision for thirty-five (35) hours per week. This code apparently had not

undergone changes within the NRA before its submission for public hearing (*) However, at the public hearing, the industry presented an amendment to increase the hours to forty. (**) The industry argued that the adoption of the forty (40) hour codes for other products manufactured in the same establishments (***) made a thirty-five (35) hour week in this industry impossible.

The labor representatives demanded a thirty (30) hour week (****) and stated that the average working time in the industry in 1932 (*****) was 37.333. They argued that "they should not be influenced by what some other plant in their locality is doing, but they ought to carry out the intent of the law and reduce the hours." (******) The argument for individual variation made this code significant in the history of NRA policy.

At the public hearing a fell discussion between the deputy administrator and his labor adviser took place. He questioned the fairness of increasing the labor rates in this industry while other industries were going on a forty hour week. The labor adviser pointed out the large amount of unemployment in this industry. He suggested that in "these different industries the labor costs should be the same or at least the rates of pay. There should be some way of working it out whereby the hourly rate or the weekly rate in all the different plants should be the same." (*******)

With evidence of the facts available that the other industries had adopted a forty (40) hour week, the gasoline pump manufacturing industry demanded a similar work week. The administration was faced with a serious problem. The Labor Advisory Board had declared that "forty (40) hours a week is too long for this industry if the intent of the Recovery Act is to be fulfilled which is to absorb all labor that was employed during the normal years from 1926 to 1929 and that thirty (30) hours a week is all that could be worked if that is to be accomplished, or at the most a thirty-six (36) hour week with provision that not more than eight (8) hours in any one day shall be worked." (********)

(*) History of the Code of Fair Competition for the Gasoline Manufacturing Industry, by E.R. Schaeffer, p. 9.

(**) National Recovery Administration hearings on the Code of Fair Competition and Practices presented by the gasoline pump manufacturing industry, August 24, 1933 ; p. 11.

(***) Ibid, pp. 31, 43, 45, 48, 51, 55.

(****) Testimony of M.R. Newham of the International Association of Machinists, Ibid. p. 56.

(*****) Ibid, p. 61.

(******) Ibid, p. 62.

(*******) Ibid, pp. 61-68

(********) Code History, for the Gasoline Pump Manufacturing Industry, Exhibit D.

The Administration followed precedents rather than the need for individual variations. In its letter of transmittal of the codes it explained that the forty (40) hour week was approved despite the fact that it will obviously add few employees to the payroll. However, in order to reabsorb the unemployment in this industry it would be necessary to reduce the hours of employment to less than thirty (30) per week. As a practical, workable proposition this would be decidedly unfair to the industry because-

(1) Some of the plants produce products which are already governed by other forty (40) hour codes and shift their labor between the different types of production.

(2) Most of the plants are in localities where the maximum is governed by forty (40) hour codes.

"Reducing the hours to a point where the weekly earnings of employees in this industry would not offset those of workers under other forty (40) hour codes in the same locality would infringe on the available labor supply for this industry. Under present conditions for practical consideration, the reabsorption of the unemployed in this industry is practically impossible. (*)

In this case hours were increased beyond the original proposal of the industry, not for economic reasons peculiar to the industry, but for fear of unfair competition among the various metal manufacturing industries if they were not all governed by the same hours provisions. This action was taken despite the fact that such extension of hours reduced the possibility of reemployment in the industry.

(*) Codes of Fair Competition Vol. 1, - p. 350-51.

III Compressed Air, Heat Exchange and Pump Industries

Since these industries presented the same code, the Compressed Air Industry code was representative of all three. In its draft code presented by the industry on August 4th, the following provision was included:

> "on and after the effective date no employer shall employ:
> (a) an employee engaged in the processing of the products of the compressed air industry and in labor operations directly incident thereto in excess of thirty-six (36) hours per week;
> (b) any other employees except executives administrative supervisory and technical employees and their respective staffs and traveling sales and service employees, in excess of forty (40) hours per week. Provided, however, that these limitations shall not apply to conditions of seasonal or peak demand which create an unusual and temporary burden for production or installation; in such special cases such number of hours may be worked as are required by the necessities of the situation, but not to exceed forty-eight (48) hours per week for any six weeks in any calendar six months' period beginning July 1, 1933, provided however, that in such special cases at least time and one-third shall be paid for hours worked in excess of the maximum, and provided further that these limitations shall not apply to employees on emergency, maintenance or repair work, not to very special cases where restriction of hours of highly skilled workers would unavoidably reduce or delay production but in such special cases at least time and one-third shall be paid for hours worked in excess of the maximum." (*)

These provisions were similar to those of the Electrical Code. In fact in transmitting these to the National Recovery Administration, the Secretary of the Compressed Air Institute declared that "in view of the fact that this code as well as the codes for the Hydraulic Institute and Heat Exchange Institute, follows very closely and is much the same as the Electrical Manufacturing code which has been approved by the President, it is assumed that a preliminary conference will not be necessary and we therefore ask that date for a public hearing be set." (**) Nevertheless, conferences with Administrative officials led to revision and presentation of a new code on August 26, 1933. This revision included a basic forty (40) hour week, in place of the previous thirty-six (36) hours and left the exemptions unchanged. (***)

(*) Code of Fair Competition for Compressed Air Industry Vol. A, NRA Files.

(**) Letter from Mr. C. H. Rohobach, Compressed Air Institute to NRA, August 11, 1933, Vol. A, NRA Files.

(***) August 26 draft in Vol. A.

This latter draft providing for longer hours was the one submitted to the public hearing on September 5, 1933. (*) The defense of the change was that the revival of the capital goods industry "can only come when consumers' goods industries begin to show profits and have money to spend for replacements, renewals or modification of plants and this recovery is hastened by the creation of a capital goods market or the improvement of the existing market." (**)

It was further contended that less than forty (40) hours per week "will necessarily be reflected promptly in selling prices and immediately act as a stoppage of the placing of business and cause further unemployment." (***) Not much reemployment was promised by the industry because of the hours' reduction. Only business revival could bring reemployment. The labor representatives presented a brief but no oral argument against this proposal. (****)

Conferences were held with the labor advisers to the code following the public hearing and no important revisions resulted, except that time and one-half pay for overtime above the daily eight hours was substituted for payment after the weekly maximum. A later draft reduced the overtime rate to time and one-third.

The final draft of the code was protested by the Labor Advisory Board which recommended a thirty-five (35) hour week. (*****) The Code Analysis Division made the following comments upon the proposal:

> "No clear statement appears in the transcript that would support the belief that the present forty (40) hour maximum hour provision will actually tend to increase employment within the industry. It was stated by Mr. Neagle that 1500 men had been added to the industry payroll in a seven months period, occurring between February and August of this year. However, it was brought out by Deput Muir that increased volume was responsible rather than the adjustment

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(*) National Recovery Administration Hearing on Code of Fair Practices and Competition by compressed air industry, September 5, 1933, p. 8.

(**) Ibid, p. 23.

(***) Ibid, p. 24.

(****) Ibid, p. 63, Mr. Newman of the International Association of Machinist.

(*****) Letter of September 22, 1933 to deputy administrator, Vol. B.

of hours worked. The figures submitted by Mr. Neagle at the hearing show that the industry is considerably in excess of fifty (50%) percent off in employment as compared to the year 1929. The forty (40) hour maximum per week is presumably designed by the industry to take up some portion of this slack between employed and unemployed in the industry. It is questionable whether the forty (40) hour maximum will result in creating an appreciable take up in that slack which will be satisfactory to the Administration. Therefore, it would seem that some readjustment of maximum hours might well be made to a point at least not higher than thirty-six (36) per week, with, of course, a corresponding increase in the minimum wage rates that will provide for a living wage for all employees." (*)

In approving this code the Deputy administrator in his report made the following comment:

"In February 1933, there was a total of 2,690 employees in the industry, marking the low point. With increased business after March 4, 1933 and the adoption of the forty (40) hour week under the President's Reemployment Agreement the total employees rose to 4,781 in August 1933, or about fifty (50) percent of the same period in 1929 ... It is recommended that a statement be issued to the effect that the forty (40) hour week and minimum rate of forty cents (40¢) an hour has been recommended by the Administrator and the Labor Advisory Board because they feel that the maximum hour and minimum rate basis will be most effective in developing volume of business in this industry, and that a shorter week and higher rate would tend to defeat the very purpose of the Act. The only way in which this industry can reemploy and increase payrolls is through increased volume in business and the Administration and the Labor Board have had this in mind in approving the codes." (**)

In all three cases, the compressed air and also the heat exchange and pump industries with similar codes, two reasons were given for administrati approval of the increase in hours by the industry. These were, first, the precedents set by similar industries for a forty hour week code and, second the belief that reduction in hours was not pertinent to reemployment in the capital goods industries.

(*) Letter of September 22, 1933, Vol. A, from P. J. Taft to G. S. Brady.

(**) Letter from Mr. Malcolm Muir to General Hugh S. Johnson, Administrator Report on the Code of Fair Competition for the Compressed Air Industry October 9, 1933. Vol. II, No evidence in support of the Labor Board's approval of this statement appears in the file.

IV. Retail Trade

Retail trade presented a unique problem to NRA because of its large number of small units. Though the outstanding retail trade association had considered a forty-eight (48) hour week, NRA pressure to effect reemployment led to the adoption and presentation of a code based upon a forty (40) hour week. This code as finally submitted was sponsored by six of the national trade associations with recommendation that "all retail trades of the country be brought under one composite code. "A forty (40) hour week was established but with provision for a forty-eight (48) hour peak during three weeks in each six months period. In submitting this proposal, however, the sponsoring trade associations noted that "the code should provide a longer week, but in order to expedite compliance with the President's Reemployment Agreement, we are submitting the code on the basis of forty (40) hours." They reserved the right, they declared, to submit a complete code at a later date providing for a longer week than forty (40) hours. (*) Opposition has heard from many sources to the forty (40) hour week proposal. The Chicago retail group was reported to be in favor of a forty-eight (48) hour week. (**) Two groups, the food dealers and the drug group abstained from sponsoring the code and sought independent codes. It was reported in some of the newspapers that "the food dealers representatives satisfied Deputy Administrator A. D. Whiteside that a forty-eight (48) hour work-week was necessary in groceries and related establishments." (***)

A. President's Reemployment Agreement Substitution

The result of these negotiations was the issuance of a PRA substitution to the retail trades which provided the following:

> "On and after the effective date of this code no individual or organization selling at retail shall work any employee (excepting executives whose salaries exceed $35.00 per week, or registered pharmacists or other professional persons employed in their profession or outside salesmen, and except outside delivery men and maintenance employees who may be employed forty-eight (48) hours weekly or more, if paid time and one-third for all hours over forty-eight hours weekly) for more than forty (40) hours per week, excepting at Christmas, inventory and other peak periods employees may work forty-eight (48) hours per week for a maximum of not to exceed three weeks in each six months ..... The maximum fixed in Paragraph 3A (above cited) shall not apply to employees in establishments employing not more than two persons, in towns of less than 2,500 population which towns are not part of a large trade area."(****)

(*) History of the Code of Fair Competition for the Retail Trade Appendix "B" Proposed Code of July 29, 1933, proposed by six national retail associations.

(**) N.Y. Daily News Record, July 26, 1933.

(***) Houston Chronicle, July 30, 1933. Herald Tribune, July 30, 1933

(****) National Recovery Administration - Substituted Wages and Hours Provisions of the President's Reemployment Agreement, Bulletin No. 6, Washington, 1933. p. 175.

Another substitution was issued to retail grocers. They were allowed a basic forty-eight (48) hour week with more liberal allowances of daily hour (*)

The PRA substitution for the general retailer represented substantially the provisions of the Retailers' Code, presented to the Administration on August 4, 1933. (**) Many changes were made, however, in a subsequent draft submitted on August 14, 1933, which went to public hearing on August 22, 1933. (***) At the public hearing additional changes in hours' provisions were presented by the sponsors. They resulted from the pressure brought by small stores in larger cities and practically all types of stores in smaller cities. (****)

B. Public Hearing

The new proposal made by the employers at the public hearing was the following:

> (A) On and after the effective date of this code no individual or organization shall work any employee except executives whose salaries are not less than $30.00 per week, and except registered pharmacists and other professional persons employed in their profession and except outside salesmen, and except maintenance and outside delivery employees may be employed forty-eight (48) hours weekly or more, if paid time and one-third for all hours over forty-four (44) hours per week, excepting, at Christmas, inventory and other peak periods employees may work forty-eight (48) hours per week for a maximum of not to exceed three weeks in each six months. It is understood and agreed that if any other groups of retailers (except food retailers who have been granted forty-eight (48) hours weekly) are granted hours in excess of those stated above that these same hours will automatically apply to the groups of retailers coming under this code.....The maximum hours fixed in paragraph 3(a) shall not apply to employees in retail establishments in towns of less than 10,000 population (when such towns are not part of a larger trade area) in which case forty-eight (48) hours weekly for all employees is permitted." (*****)

In explaining this change the six sponsoring retail organizations declar that "the experience of many stores has indicated to associations that such stores, especially those in smaller places cannot comply with the rigorous restrictions of a forty (40) hour week. (******)

(*) Ibid, p. 175.
(**) Wall Street Journal, August 5, 1933
(***) History of the Code of Fair Competition for the Retail Trade, p. 29
(****) Daily News Record, August 21, 1933.
(*****) National Industrial Recovery Administration hearing on Code of Fair Competition and Practices presented by retail trades, August 22, 1933; Vol. 1, p.28.
(******) Ibid. p. 26

In supporting the proposal for a forty-four (44) hour week with an exception for a forty-eight (48) hour week in specific areas, the retailers contended that the above hours' schedule "would enable the present firms in this joint retail group to reestablish their 1929 volume of employment. It has been felt that the absorption of employees of firms that have gone out of business should be taken care of normally with the increase of business that is under way." (*) The decline in retail employment was stated to be much smaller than in other fields since as a service industry it must be prepared for customers at all times and could release few persons. No information was presented on the extension of hours during the depression.

The change in basic weekly hours from forty (40) to forty-four (44) per week was not satisfactory, however, to many groups within the trade. Those protesting the forty-four hour week and urging a forty-eight (48) hour week included the hardware stores, neighborhood dry goods stores, shoe stores and other classes. The arguments most commonly used were the following: (1) the retail business was one engaged in rendering a public service and conforming to customer requirements for early openings and late closings; (2) individual branches of the industry would reemploy a total equal to or more than their 1929 employment level with a forty-eight (48) hour week largely because displacement among surviving firms in the retail industry was comparatively small during the depression; (3) the new demands for skilled personnel could not be filled and the training of such personnel would be burdensome; (4) a shorter week would so increase costs as to cause a large number of failures in the retailing industry, particularly in the smaller towns, and among smaller retailers who would succumb either because the overhead would be too burdensome or because the department and chain stores would be able to compete more readily; (5) competition with the owner-operator stores which would remain unregulated as to hours would make competition for the regulated stores keener and sharper; (6) a reduction in weekly hours below forty-eight (48) is too drastic since working hours in many branches are far in excess of sixty and reductions are undesired by the huge proportion of members of the trade; (7) uniformity of hours with competing industries selling similar articles is imperative. There was a strong sentiment among several groups for a differential of maximum hours of employment for stores maintaining longer operating hours. (**)

Only one group of employers raised a voice in protest against the proposal for a forty (40) or larger number of hours. They were the New York Retail Furniture Association. They proposed a thirty (30) hour week for the industry since, they argued, "it is obvious it will tax but slightly the ingenuity of the proprietors of the stores to avoid the employment of additional help by limiting the hours of employment to forty (40) hours." (***) They contended that "by staggering the hoursof labor among the few employees no additional working people will be required." However, this position was met with amazement by the deputy administrator who exclaimed that "that would increase the selling expense about 200 percent." (****)

(*) Testimony of Dr. David Friday, Ibid, p.55
(**) Ibid, Hearings
(***) Ibid, p. 275
(****) Ibid, p.284

Labor groups likewise raised their voice against the proposal. They protested the lengthening of hours from forty (40) to forty-four (44) hours and called the code "reactionary" urging that the protest of the small cities should result in an exemption for them rather than in the granting of a differential of hours to all groups, large and small, they spoke out against the exemptions granted to special occupations and the absence of any special maximum number of hours regulating this group. (*)

C. Final Provisions

As a result of these hearings nine retail associations, including three new groups, sponsoring the code submitted a new draft on the last day of the hearings, August 24, 1933. These provisions were made by a committee of retailers largely at the suggestion of the Administration. The new provisions regarding hours specified a forty (40) hour week for stores electing to remain open for business fifty-two (52) hours or less, whereas a forty-four (44) hour week was established for those electing to operate between fifty-six (56) hours and sixty (60) business hours, and those operating for sixty-three (63) hours or more were allowed a forty-eight (48) hour basic work week for their employees. Exempt from this maximum were executives earning $30.00 per week or more, registered pharmacists, other professional persons, outside salesmen, and delivery and maintenance employees who were permitted a forty-eight (48) hour maximum. A seasonal exemption of three (3) weeks of forty-eight (48) hours in each six months was permitted for each employee. (**) The "principle of elective provisions respecting wages and hours was recommended at the public hearing but was more specifically developed by the Administration and proposed to the industry." (***)

Labor did not participate in the development of these terms. The Administrator found the industry agreeable to these proposals and during the following month, the major terms were elaborated. The problem of "loss limitation" and "stop loss" features of the code delayed the final approval. On September 20, revisions incorporating these changes were presented. They were included in the final code (****) with practically no significant change.

(*) Testimony of Miss Rose Schneiderman of the Labor Advisory Board, pp. 418-431.

(**) Ibid, p. 782.

(***) History of the Code of Fair Competition for the Retail Trade, p.3.

(****) ARTICLE V

SECTION 1- Basic Store and Working Hours

On and after the effective date of this Code establishments in the retail trade shall elect to operate upon one of the following schedules of store hours and hours of labor:

Group A.-Any establishment may elect to remain open for business less than fifty-six (56) hours but not less than fifty-two (52) hours per week, unless its store hours were less than fifty-two (52) hours prior to June 1,1933, in which case such establishment shall not reduce its store hours; no employee of these establishments shall work more than forty (40) hours per week, nor more than eight (8) hours per day, nor more than six (6) days per week.

(****) Footnote continued on next page.

(****) Footnote continued from preceding page.

Group B.--Any establishment may elect to remain open for business fifty-six (56) hours or more per week but less than sixty-three (63) hours per week; no employee of such establishment shall work more than forty-four (44) hours per week, nor more than nine (9) hours per day, nor more than six (6) days per week.

Group C.--Any establishment may elect to remain open for business sixty-three (63) hours or more per week; no employee of such establishment shall work more than forty-eight (48) hours per week, nor more than ten (10) hours per day, nor more than six (6) days per week.

Group B.--Any establishment may elect to remain open for business fifty-six (56) hours or more per week but less than sixty-three (63) hours per week; no employee of such establishment shall work more than forty-four (44) hours per week, nor more than nine (9) hours per day, nor more than six (6) days per week.

Group C.--Any establishment may elect to remain open for business sixty-three (63) hours or more per week; no employee of such establishment shall work more than forty-eight (48) hours per week, nor more than ten (10) hours per day, nor more than six (6) days per week.

No employee shall work for two or more establishments a greater number of hours, in the aggregate, than he would be permitted to work for that one of such establishments which operates upon the lowest schedule of working hours.

No employee not included in the foregoing paragraphs, and not specifically excepted hereinafter, shall work more than forty (40) hours per week, nor more than eight (8) hours per day, nor more than six (6) days per week.

Section 2. Schedule of hours to be posted.--On or within one week after the effective date of this Code every retail establishment shall designate under which of the Groups set forth in the preceding Section it elects to operate and shall post and maintain in a conspicuous place in the establishment a copy of such election showing its store hours and employee working hours.

Section 3. Changes in store hours and employee working hours.--

(a) No establishment may change from the Group in which it has elected to operate except upon December 31 of every year.

(b) Any establishment, however, may at any time increase its store hours, provided it maintains the basic employee work week of the Group in which it originally elected to operate.

(c) Any establishment may, for a period not to exceed three (3) months during the Summer, temporarily reduce its store hours,

(****) Footnote continued on next page.

(****) Footnote continued from previous page.

but the weekly wages of its employees shall not on that account be the weekly wages of its employees shall not on that account be reduced.

Section 4. Exceptions to maximum periods of labor.--

(a) Professional persons, outside salesmen, outside collectors, watchmen, guards, and store detectives.--The maximum periods of labor prescribed in Section 1 of this Article shall not apply to professional persons employed and working at their profession, or to outside salesmen, outside collectors, watchmen, guards, and store detectives.

(b) Maintenance and outside service employees.--The maximum periods of labor prescribed in Section 1 of this Article shall not apply to maintenance and outside service employees; but such employees shall not work more than six (6) hours per week above the maximum hours per week otherwise prescribed by Section 1 unless they are paid at the rate of time and one-third for all hours over such additional six (6) hours per week.

(c) Executives.--Subject to the conditions set forth in Section 5 of this Article, executives receiving $35.00 or more per week in cities of over 500,000 population, or receiving $30.00 or more per week in cities of 100,000 to 500,000 population, or receiving $27.50 or more per week in cities of 25,000 to 100,000 population, or receiving $25.00 or more per week in cities, towns, villages, and other places under 25,000 population, may work in excess of the maximum periods of labor prescribed in Section 1 of this Article. In the South executives paid not less than ten (10) per cent below the wages just specified may work in excess of such maximum periods.

(d) Peak periods.--At Christmas, inventory, and other peak times, for a period not to exceed two (2) weeks in the first six (6) months of the calendar year and not to exceed three (3) weeks in the second six (6) months, an employee whose basic work week is forty (40) hours may work not more than forty-eight (48) hours per week and nine (9) hours per day; an employee whose basic work week is forty-four (44) hours may work not more than fifty-two (52) hours per week and nine and one-half (9½) hours per day; an employee whose basic work week is forty-eight (48) hours may work not more than fifty-six (56) hours per week and ten (10) hours per day. All such work may be without the payment of overtime.

Section 5. Limitation upon number of persons working unrestricted hours.--Notwithstanding the provisions of the foregoing sections of this Article, and regardless of the number of persons otherwise permitted to work unrestricted hours, the total number of workers in any establishment (whether such workers are executives, proprietors, partners, persons not receiving monetary wages, or others) who shall be permitted to work unrestricted hours shall not exceed the following ratio: In establishments comprised of twenty (20) workers or less the total number of workers who may work unrestricted hours (not including those workers specified in Section 4 of this Article)

(****) Footnote continued on next page.

In presenting this code with its hours provisions to the President, the Administrator declared that "the elective provisions regarding wages, hours of work and store hours suggested by the Administration were generally accepted as equitable. The working hours may not be entirely satisfactory from a purely social viewpoint; but they represent a substantial reduction from the hours which prevailed at the retail trade. This reduction in working hours will restore employment in retailing to the 1929 level." (*)

While the final code represented an extension of hours over those originally proposed, it also was a compromise among the contentions of the various interested trade groups. The forty (40) hour week provision was observed by a considerable section of the retail trade in the large cities.

(****) Footnote continued

shall not exceed one worker for every five (5) workers or fraction thereof; in establishments comprised of more than twenty (20) workers the total number of workers who may work unrestricted hours (not including those workers specified in Section 4 (a) of this Article) shall not exceed one worker for every five (5) workers for the first twenty (20) workers, and shall not exceed one worker for every eight (8) workers above twenty (20).

Section 6. Hours of work to be consecutive.--The hours worked by any employee during each day shall be consecutive, provided that an interval not longer than one hour may be allowed for each regular meal period, and such interval not counted as part of the employee's working time. Any rest period which may be given employees shall not be deducted from such employee's working time.

Section 7. Extra working hour on one day a week.--On one day each week employees may work one extra hour, but such hour is to be included within the maximum hours permitted each week.

Section 8. Conflict with State laws.--When any State law prescribes for any class of employees shorter hours of labor than those prescribed in this Article no employee included within such class shall be employed within such State for a greater number of hours than such State law allows.

(*) Codes of Fair Competition Vol. I, p.29

V. CONCLUSION

The fact that in six cases hours were increased over those originally proposed by the industry is significant. Management's pressure for longer hours was unrelenting. Even where they had agreed to a basic formula for shorter hours, later pressure for extension was great. Strong employer groups reduced the number of codes establishing a shorter than forty hour week. Five of the codes in this group first proposed a 35 or 36 hour week as the basic work week, but these proposals were modified and the hours extended to 40. The sixth was presented as a 40 hour code and when finally approved provided for a range of hours extending from 40 to 48.

In effecting these changes industry pointed to approved precedents in competitive industries and asked for uniformity in basic hours. The four metal manufacturing industries in this group had their hours increased because the prevailing norm for similar industries was forty hours and the administrative officials handling these codes were unsympathetic to drastic reductions in normal full time working hours. In the case of the other two industries hours were lengthened as a compromise among contending groups and to assure the codification of industry. The longer hours were approved despite the recognition that they would not increase employment in these industries to the 1929 level. These increases in basic hours foreshadowed the basic changes in NRA standards for the determination of basic hours in codes.

CHAPTER XIII

Negotiations of Codes in which Basic Hours Remained the Same as Originally Proposed

In contrast to the preceding two groups, there were 85 codes in which the negotiations resulted in no modification of the basic weekly hours. Explanations given by the Administration for approval of these codes indicated the reasons for and the circumstances giving rise to the resistance to change. The negotiations of four codes in this group are described.

I. Electrical Manufacturing

The electrical manufacturing industry presented a code providing for a basic thirty-six hour week for employees in "the processing of products and in operations incident thereto"; a forty hour week for all other employees except executive, administrative and supervisory; for a tolerance of 144 hours per year in excess of the maximum to meet seasonal and peak demand, and a complete exemption for emergency periods. In the last case, reports of such work were required. (*) No substantial change was made in basic hours' provisions in the final code; only the seasonal and peak tolerance was altered. The development of the hours provisions in this code is of special interest since this was the first capital goods industry up for consideration.

A. Industry's Position

While the industry had considered the possibilities of a 30 hour week, no such action was taken. The suggestion was filed away for comments. (**) The hours as proposed were supported by the contention that

> "since the average number of hours per week per employee being worked at the present time, because the subnormal volume of business, is under 36 hours per week, so that if any material improvement in the electrical manufacturing industry is desired which will bring back into employment a large number of the employees which were engaged in the industry during 1929, we must have an improvement in the capital goods branch of the industry and for that we must wait on improvement in other industries." (***)

(*) New York Times, July 14, 1933

(**) National Recovery Administration, Electrical Code Hearing, Vol. 1, pp. 10-14.

(***) Ibid V. I., p. 12, Testimony by C. L. Collins, President Reliance Electrical Engineering Company.

It was anticipated that improvement in the industry would be limited to the consumer branches and would result in the employment of an additional 25,000 persons. For the capital goods branch the only solution visualized was "a real improvement in business in other industries". The industry estimated that it would only require about 50 per cent increased volume of business over the average that existed in June, or a volume of business that would be an equivalent of 60 per cent of the volume of business which the industry employed in 1929. (*) The seasonal tolerance was advocated for certain branches in the industry, such as refrigerators, where storage of their product and therefore regularization was difficult, and for small towns to which migration of employees seemed unwise. (**)

B. Labor's Position

Labor countered this proposal with a thirty-hour week and the elimination of the proposed seasonal tolerance. In support of their stand, labor representatives pointed out the average of 30.9 hours per employee in the industry in April 1933, and a prevailing volume of production that would necessitate an 11-hour week to reabsorb enough persons to raise total employment in the industry to the 1929 level. However, for practical purposes they recommended a 30-hour week. In respect to the seasonal tolerance the labor representatives also suggested that more could be done to stabilize the industry, and that furthermore, "under present conditions where men and women are glad to have any employment" it is wise to hire them "even temporarily even though you have to dump them out unemployed at the end of the season". (***

Furthermore, labor emphasized the need for establishing shorter hours of employment so as to take up the slack of general unemployment, and affirmed that the code as it stood would have no effect on unemployment. (****)

(*) Ibid p. 13.

(**) Ibid, pp. 21-25. Testimony by G. W. Mason, President, The Kelvinator Company.

(***) Ibid pp. 140-153. Testimony of Mr. C. L. Reed and Mr. C. D. Keaveney of the International Brotherhood of Electrical Workers.

(****)Ibid, p. 205, Statement of William Green.

C. Negotiations

The code committee was asked to reconcile its proposal with the criticisms which had been presented. A meeting was held with members of the Labor Advisory Board (*), but the industry made no substantial change in the hours provisions. (**) Again the labor representatives criticized these proposals (***). Another appeal was made by the deputy administrator for reconsideration of the wage and hour provisions "in the light of the evidence already in and anything additional that has been presented" (****); but in the afternoon session the industrial representatives again indicated their unanimous stand against changing the thirty-six hour provision but stated their willingness to reconsider the provision for 144 hours tolerance. (*****)

Throughout the proceedings, the deputy administrator was apparently impressed by industry' position. In preparing the background for a question to the labor representative, he declared "industry cannot be expected to do much until it has some chance of getting a volume of business which would enable them to get their people reemployed..... This capital goods end of the industry cannot by writing a ticket or any other gesture increase their hours of work, even up to 36 hours, until they can get some business".(******) In the consideration of the seasonal tolerance the Administration evidenced a disposition to recognize the difficulties of eliminating the seasonal variations(*******).

(*) Mr. William Green and Dr. Leo Wolman.

(**) National Recovery Administration Electrical Code Hearing, V. II, p. 1007

(***) Ibid, pp.1044-1057, July 21, 1933.

(****) Ibid, p. 1065.

(*****) Ibid, p. 1067.

(******) Ibid, pp. 207-8.

(*******) Ibid, p. 148.

Conferences were held immediately after the public hearings. They dealt primarily with the minimum wage rate and the seasonal tolerance provided in the code. The basic 36 hours week was approved by the Chairman of the Labor Advisory Board because it "could be expected to result in material reemployment in the industry should any improvement in business develop". He did oppose the seasonal variation of 144 hours per year because such provision was not required by all branches of the industry and because it was difficult, if not impossible, to determine the amount of seasonal tolerance necessary to meet the industry's needs. Furthermore, "the extent to which the industry could level out the seasonal peaks insofar as production was concerned had not yet been determined and could not be expected to be fully developed until some restrictions were imposed upon them which would require the fullest application of their ingenuity to this problem".

In its revision the industry accepted the proposal of the Chairman of the Labor Advisory Board that each firm report to the supervisory agency at the end of each month (*) its hours in excess of the stipulated maximum of 36 per week. Specifically, the new provision permitted member firms to work "such number of hours... as are required by the necessities of the situation, but at the end of each calendar month, every employer shall report to the Administrator, through the Board of Governors of the National Electrical Manufacturers Association, in such detail as may be required, the number of man-hours worked in that month, and the ratio which said man-hours bear to the total number of man-hours of labor during said month". (**)

The agreements on both wages and hours were developed jointly by a committee (***). In approving the code, the deputy administrator stated that "immediate reemployment of not less than 10 per cent more persons and as much as 50 per cent in some of the consumer goods branches will result; a complete reemployment of the number to be found in the industry in the year 1929 should result when, through an improvement in the capital goods division, unfilled orders of the industry (which on June 1, 1933, stood at 40 per cent of 1929 level) shall reach 60 per cent of the 1929 volume". (****)

Although this was one of the first industries to be codified, no real effort was made to revise the basic hours downward. There was prevailing sentiment against further reduction. There was evident conviction that the capital goods industry must look to the general revival of industry for substantial reemployment. Further reduction of hours in this industry was not considered vital to recovery.

(*) National Recovery Administration, Code of Fair Competition for the Electrical Manufacturing Industry, Vol. II, Report of Deputy Administrator W.L. Allen, August 12, 1933.
(**) National Recovery Administration, Codes of Fair Competition, Vol. I, p. 47.
(***) Consisting of C. W. Snope, William Green an Leo Wolman.
(****) Ibd, pp. 44-45.

II Hosiery Industry

In the hosiery industry, the preliminary conference between organized labor and the employers brought the two parties to clear understanding of their respective points of view and resulted in agreement upon certain specific issues. The final changes made after the public hearing represented further narrowing of the differences which had to some extent already been composed.

The employers were represented in the negotiations by the National Association of Hosiery Manufacturers. Labor was represented by the American Federation of Hosiery Workers which had organized largely in the full fashioned branch of the industry. At conferences between the two organizations under the guidance of the National Recovery Administration officials during the last two weeks in June, many differences were reconciled. Some of the issues resolved were the establishment of wages for semi-skilled and skilled occupations, the abolition of child labor, and the regulation of the stretchout. (*) No solution was reached with respect to the hours of employment. Industry proposed a forty, and labor a thirty-hour week. The agreement arrived at in the earlier conference was confirmed by an industry-wide conference held in New York City on July 12, 1933 (**). The resulting code provided that productive operations of plants were to be limited to two shifts of forty hours each except in the full fashioned mills where the work of the footing machine was to be restricted to one forty-hour shift.

In view of the general unanimity in the industry and the drive for early codification an Executive Order was issued on July 26, 1933, approving the terms of the code accepted by the industry pending the approval of the permanent code. This temporary code formally included the terms already accepted by the industry.

The hours provisions of this code read as follows:

"On and after the date on which this Code goes into effect, no person in the hosiery industry shall employ any employee in productive operations on a schedule of hours of labor which shall exceed forty (40) hours per week.

"It is understood that the above limitation on hours of work shall not apply to office employees, supervisors, foreman, engineers, firemen, electricians, repairshop men, dyers, shipping force, watchmen, cleaners, outside workers, sales force, and those engaged in emergency maintenance or repair work.

"The productive operations of a plant shall not exceed two shifts of forty (40) hours each per week.

(*) History of Code of Fair Competition for the Hosiery Industry, Vol. I, p. 17.
(**) New York Herald Tribune, July 13, 1933.

"Manufacturers of woolen hosiery may operate their knitting equipment not to exceed three (3) shifts of forty (40) hours each until December 31, 1933, after which time their knitting operations shall be limited to two (2) shifts of forty (40) hours each. This exception applies only to the manufacture of hosiery which contains at least twenty per cent (20%) of wool. Manufacturers of woolen hosiery may operate their carding equipment not to exceed three shifts of 40 hours each until a code for the woolen industry goes into effect.

"The work week for productive operations, except dyeing shall consist of five days of eight hours each. These days shall be Monday to Friday.

"From the date that this article shall be put into effect tentatively and until the date on which the Code shall go into effect full fashioned footing equipment which is operating one shift shall continue to operate one shift only, and full fashioned footing equipment which is operating more than one shift shall operate not to exceed two shifts." (*)

The labor groups through the Labor Advisory Board agreed to the temporary order after the compromise had been worked out on the shift regulation of footers. (**)

At the public hearings held on August 10, 1933, serious effort was made by organized labor's representatives to obtain a shorter work week; but industry's proposal was finally modified only in one important respect. It was provided that the full fashioned hosiery plants operating their footing equipment for two shifts were to be restricted to 36 hour shifts. The labor representatives took objection to the loose manner in which the forty hour week provision was phrased, asked for the application of the forty-hour week to all employees including those not engaged on production, suggested a 30-hour shift for the footing machine operation, and recommended adjustment in wages to give the latter employees the earnings of a 40-hour week. (***)

The industry stated its belief that the forty-hour week would absorb the persons normally attached in 1929. It estimated the reduction in hours to amount on the average, to about 27 per cent. It suggested that not only would the total 1929 employment be reached but "that the hour restrictions will operate in the direction of materially reducing the seasonal variations in the number of workers employed, thus assuring the workers in the industry a more steady employment throughout the calendar year". (****)

(*) Codes of Fair Competition - Vol. I, pp. 241-242.
(**) New York Times, July 25, 1933-Philadelphia Record, July 25, 1933
(***) National Industrial Recovery Administration Hearing on Code of Fair Practices and Competition presented by hosiery industry August 10, 1933 - p. 51.
(****) Ibid, pp. 6-9 Testimony of Mr. Constantine.

At the conference durin' the two days following the public hearing, many of the issues remaining unsettled were ironed out by the labor and industry groups. A 35 hour week was established for the footing machines, with two shifts and specific provision of 40 hours' pay. This agreement, intended to discourage the second shift, resulted from a compromise between the employer and union representatives. Provision was also made for the establishment of hours regulations for the various exempted groups of employees. (*)

(*) The hours provisions of the Hosiery Code as Finally approved were as follows:

"1. On and after the date on which this Code goes into effect, no person in the hosiery industry shall employ any employee in productive operations on a schedule of hours of labor which shall exceed forty (40) hours per week.
2. It is understood that the above limitation on hours of work shall not apply to office employees, supervisors, foremen, engineers, firemen, electricians, repairshop men, dyers, shipping force, watchmen, cleaners, outside workers, sales force, and those engaged in emergency maintenance or repair work.
3. On and after September 4, 1933, the maximum number of hours for office employees in the hosiery industry shall not exceed an average of forty (40) hours per week over each period of six months.
4. On or before January 1, 1934, the code authority shall prepare and submit to the Administrator suggestions for a schedule of maximum hours and minimum wages to apply to those employees excepted under Section 2 of this Article.
5. It is interpreted that the provisions for maximum hours establish a maximum of hours of labor per week for every employee covered, so that under no circumstances will such an employee be employed or permitted to work for one or more employers in the industry in the aggregate in excess of the prescribed number of hours in a single week.
6. The productive operations of a plant shall not exceed two shifts of forty (40) hours each per week. The work week for productive operations, except dyeing, shall not exceed five (5) days of eight (8) hours each. These days shall be Monday to Friday, inclusive, except in those states where the state laws operate to prevent the operation of two forty (40) hour shifts within the mentioned five (5) days. In such states, the employer may operate one shift on Saturday, not to exceed four (4) hours, it being definitely understood that his total machine hours shall not exceed eighty (80) hours per week.
7. For a period of six (6) months following the date on which this code goes into effect, full-fashioned hosiery plants whose footing equipment on July 24, 1933, was being operated on a two-shift basis, but the length of each of these shifts shall not exceed thirty-five (35) hours per week. The rates paid to knitters, knitting-helpers, and toppers working on these thirty-five (35) hour shifts, shall be such as to provide them earnings equal to those which they would receive if working on forty (40) hour shifts. Full-fashioned hosiery mills whose footing equipment on July 24, 1933, was being operated

These latter regulations were finally added in Amendment No. 5, approved March 8, 1935. The deputy administrator in accepting this proposal adopted the industry's position. He concluded that "by restricting hours of work per worker to forty (40) per week, it is anticipated that employment can be got back to the 1929 level and that the extent of short time work for any large number of employees will be materially lessened". (*)

III Fishing Tackle Industry

This industry, employing a little over 3,000 persons, was one of the first to be codified. Its code was submitted on August 4 after several preliminary discussions with NRA officials. (**) At the public hearing held on August 14, 1933, industry was represented by the Association of Fishing Tackle Manufacturers. The spokesman for labor (***) was a Special Representative of the International Association of Machinists, a union with interests in similar industries, who had been designated by the Labor Advisory Board.

The industry proposed a forty hour week averaged over a six months period. The labor representative's recommendation of a thirty hour week was not taken account of in consideration of the code. The administration officials carried on the negotiations with the industry on the terms of employment with infrequent consultation with the labor adviser.

In defense of the average forty hour week, the industry representatives contended that the exclusive fishing tackle manufacturers "must of necessity have some provision for reasonable overtime operations during the season's peak". (****) They acknowledged, however, that elimination of the seasonal tolerance "would be an ideal situation for a manufacturer who produces a diversified line of productions in addition to fishing tackle and has a surplus of labor in certain departments during the slack season of these departments which he can transfer

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(*) Foot Note Continued
on a one-shift basis shall not, during said six (6) months, operate such equipment more than one shift of forty (40) hours per week. Not later than thirty (30) days before the expiration of the mentioned six (6) months, the code authority shall submit, for the Administrator's approval, a recommendation for determining a more permanent policy respecting footer operation designed to effect a reasonable balance between production and demand.
E. Manufacturers of woolen hosiery may operate their knitting equipment not to exceed three (3) shifts of forty (40) hours each until December 31, 1933, after which time their knitting operations shall be limited to two (2) shifts of forty (40) hours each. This exception applies only to the manufacture of hosiery which contains at least twenty per cent (20%) of wool."

(*) Report on a Code for the Hosiery Industry by Lindsay Rogers, August 25, 1933 - Code for the Hosiery Industry, Vol. A.
(**) Code History for the Fishing Tackle Industry Compiled by L. B. Mitchell, pp. 10-12
(***) Mr. R. S. Newhan.
(****) Statement of J. K. Kinnear, President American Fork and Hoe Co. Public Hearing Transcript - p. 4.

to the tackle department during its busy season". Some manufacturers urged a flat forty hour maximum work week because it "would tend to stabilize the industry by forcing the jobbing purchaser to place his order sufficiently far in advance to be assured of the delivery of his merchandise and would result in a more balanced yearly production". Furthermore, they pointed out that the codes were being developed for manufacturers producing other products as well as fishing tackle who were establishing a forty hour week (*) in other parts of their business.

The administration officials attempted during the hearing to obtain a revision of the various provisions. In the first place, they secured the industry's assent to placing firemen, watchmen,, janitors and office employees, originally exempt from hours clauses, under the general restrictions and to defining the tolerance for office workers specifically. (**) In the second place, they attempted to secure a more rigid provision regulating hours. They considered the average too liberal in "comparison to the other codes" and feared a tendency "to work up to your peaks and then let people out entirely during the lean season". They pointed out that the skilled workers in the industry "could be laid off temporarily, particularly in smaller communities, and there would be a disposition to work for 12 straight weeks for 48 hours a week". (***)

In view of this criticism from the administration, the sponsors of the code agreed to drop the averaging provision for production workers and to substitute the following:

> "No manufacturer shall operate upon a schedule of hours of labor for his employees, except office, supervisory staff and sales force, in excess of 40 hours per week and 8 hours per day. The maximum hours of labor for office employees shall not exceed 40 hours a week average over a period of six months." (****)

Daily limit on hours was included at the request of administrative officials. (*****)

In appraising the code, the administration indicated that in theory "more than 500 additional persons" would be added, thus bringing the total well over that for the peak period of 1928 "in view of the reduction in hours from an average of 47 in 1928 to the maximum of 40 in the code". (******)

(*) Testimony of E. M. Jack, Vice President Union Hardware Company Ibid., pp. 22-25.
(**) Ibid, p. 47.
(***) Ibid, Statements by Mr. Whiteside, pp. 50-53.
(****) Ibid, p. 99.
(*****) Ibid, p. 56.
(******) Report of Hearing submitted to National Recovery Administrator Johnson by Deputy Administrator Whiteside.

IV. Iron and Steel Industry

This industry was an outstanding case of negotiations which ended with no modification in the basic hours. Labor and governmental representatives were eager to make it a precedent for lower hours, but the effort failed.

It took two months to complete the negotiations, though the labor provisions of the final code were similar to those in the earlier draft of July 6. Protracted negotiations over modification of Section 7(a) prior to the public hearing, delayed its calling. While the draft of July 6 was the first to be formally presented to NRA, two previous ones containing a 48 hour week had been submitted. The Administrator had questioned the desirability of such a long week and its effect upon reemployment. In consequence, the draft of July 6 set a 40-hour week.(*) The codes underwent considerable subsequent revision, but the basic hours remained the same.

A. Public Hearing

The public hearing took place on July 31, 1933. While the major interest centered on the question of the modification of Section 7(a), the problems of the hours also received much discussion. The Secretary of Labor observed, "It is not my purpose to suggest the exact number of hours that the industry ought to set as the maximum, (but) I am convinced that the maximum of forty is too great to accomplish the purposes of wide reemployment....." "Thirty-six hours per week which is six hours a day for six days, or thirty hours, which is six hours a day for five days, offer interesting opportunities for reemployment of large numbers of persons." Steel workers she had found also favor the six-hour day. Shorter working hours, she contended, were required to eliminate the seven day week in the industry and the unduly long hours and to "provide employment for more than 150,000 iron and steel employees now out of work". The average hours of employment as reported by the Bureau of Labor Statistics for the Iron and Steel industry for May 1933 had been 32.7 and for June, 37.9 according to estimates worked out by the Research and Planning Division of the National Recovery Administration. "This means that those working are only partially employed and if a forty hour week were permitted, a great deal of additional production would be turned out by increasing the hours from the present average to forty per week. If this were done very few new men from among the unemployed would be needed, even if orders justified increased production." She disapproved of the averaging of hours over the six months period.(**)

(*) Cleveland News, June 21, 1933.

(**) Address of Secretary of Labor Frances Perkins before the National Recovery Administration, July 31, 1933. Department of Labor, Office of the Secretary.

Organized labor (*) recommended a thirty-hour week with the exemp- of executives, supervisors and technicians and emergency workers provided time and one half were paid for all hours over six per day. It was contended that "there are not more than 30 hours of work per week and there are probably less than 30 for the workers who should be absorbed by the iron and steel industry". The 40 hours per week was expected to help little as a reemployment measure. "The only sensible, the only humane, course of action", the argument continued, "is to set the hours at a point, 30 per week that gives some substantial promise of prompt absorption of a goodly number of the unemployed." The proposal of the Institute is not really for 40 hours, but insofar as practicable and having due regard for the varying demands of the consuming and processing industries for the respective products. (**) The Steel and Metal Workers Industrial Union also presented a brief calling for a thirty hour week instead of the forty proposed by the Institute.

B. Negotiations

Following the hearing, conferences were held by the industry alone and then with the administration. In the process of revision the administration apparently was eager to achieve two major changes. The first was to eliminate the averaging of hours and to establish a real forty hour week. (***) Secretary Perkins was insistent upon this point. The second was to increase minimum wages, especially for the southern district and to reduce the number of geographical wage districts. Industry balked at both suggestions. In a communication addressed to the Administration, a representative of the industry (****) declared, "We call attention to the fact, that, in accomplishing the great purpose of the National Recovery Act, the members of the code have already gone beyond anything that can be justified by present conditions. They can justify themselves to their stockholders only by the realization of the hopes aroused by the efforts of the National Administration. They cannot go further." (*****) With respect to the maximum hours of labor and minimum rates of pay, he declared that

> "practical, not theoretical, questions are involved and they cannot be solved merely by mathematical computation since there is probably no industry in the country involving so many variable factors as the steel industry." (******)

By August 6 negotiations on the Steel Code had come to a standstill. The Administrator indicated that the Government might write the code for the industry. (*******) On August 15, members of the American Iron and

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(*) Mr. William Green presented labor's case.
(**) National Recovery Administration, Transcript of Proceedings Steel Code Hearings, July 31, 1933.
(***) Philadelphia Public Ledger, August 2, 1933; and Washington Post, August 2, 1933.
(****) Mr. R. P. Lamont.
(*****) Des Moines Tribune, August 4, 1933 and Philadelphia Public Ledger, August 5, 1933.
(******) Philadelphia Public Ledger, August 5, 1933.
(*******) New York Journal of Commerce, August 9, 1933.

Steel Institute met in conference on hours and wages at the offices of the Secretary of Labor upon her invitation. (*) Upon the arrival of the representative of labor the steel members immediately left the conference, and the meeting was continued in another room without him. (**)

At the conference with the Secretary of Labor a Committee was appointed to continue the study of hours and wages. This Committee consisted of representatives of the Division of Research and Planning, the Bureau of Labor Statistics, the Iron and Steel Institute, and of the Iron and Steel Division of the Department of Commerce, but no representatives of the Labor Advisory Board or of organized labor. The Committee met continually until the night of August 17, but reached no agreement. The industry representatives refused to cooperate, and offered no information on questions at issue, such as freight charges, costs of processing and assembling materials or data used by the industry to justify its requests for regional wage differentials. They protested that the figures could not be obtained except after laborious calculations and that they would even then be of little value. The Administration sought information concerning the 35 cents minimum rate proposed for the northwestern part of the United States and the other wage differentials.

The Administration's findings with respect to hours presented to these conferences were as follows:

1. Number of workers attached to the steel industry.

The NRA experts had arrived at an estimate of 420,000 workers for those normally to be attached to the iron and steel industry, largely on the basis of the average number employed in the industry in 1929. The Administration members pointed out that this figure was conservative, since in May 1929 the industry was giving work to 429,000 people. Industry, on the other hand, contended that these figures included men working on construction, normally belonging to the construction industry and not to the steel industry. A compromise of 400,000 employees "attached" to the industry was reached.

2. The extent to which the industry had already reemployed its fair share of the unemployed.

(*) The conferees were the Secretary of Labor, Deputy Administrator Simpson, Donald Richberg and William Green.

(**) New York Times, August 15, 1933; Washington Post, August 16, 1933; A.F.L. Weekly News Service, August 19, 1933. It is interesting to note that this incident caused considerable controversy. Labor considered it a slap and a challenge to the Government and the NRA. The Labor Advisory Board took official notice of the development and issued a statement in which it declared that it deemed this action an affront not only to Mr. Green and the Board, but also to the Recovery Administration. The Board protested the right of the steel industry to maintain such an attitude and requested the Administrator to make the matter a subject of conference and consideration with the Board. The Washington correspondent of the magazine "Steel" explained this action as representing the desire of the industry to avoid giving any impression that the "Big Bosses" "were hobnobbing in conference rooms with the President of the American Federation of Labor."

The statement of 32 reporting companies, presented by the Industry, for the week ending July 29, showed they had for that week employed 317,538 out of 338,683 available for service. "Therefore," it was argued by industry's representative at the conference "these companies had employed all but 6% of their full quota." This conclusion was held invalid by the Administration's experts. These companies had about 94% of the industry's employed workers; furthermore, 317,538 employed during the week ending July 29 included salaried, office and supervisory employees. If office employees were added to the base figure of those attached to the industry, the 317,000 employed by these 32 companies fell 29% short of the base figure, including office employees, for these 32 companies.

Apparently no agreement could be reached on this matter between industry and the Administration.

3. Possibility of operating under a 40-hour week and 8-hour day.

The question at issue here was how many additional workers will a maximum 40-hour week require; and what, if any difficulties would there be in obtaining the necessary skilled workers. Taking an estimate of July employment, of 272,000 based on U. S. Bureau of Labor Statistics data, and applying to it the estimate of an average of 43.4 hours per week per man for the month of July, as claimed by the industry, the report arrived at the simple arithmetic conclusion as follows: $\frac{272,000 \times 43.4}{40}$ equals 295,000. In other words, a 40 hour week would add 23,000 more wage earners to the payroll. However, this result was too mechanical and did not lead to the correct result. Not all workmen could possibly work exactly 40 hours; the average would have to be considerably less than 40 hours. In addition, there was considerable part time work. On the basis of this calculation, the report arrived at the conclusion that reemployment could occur even when an industry on an average is working below the maximum. With 272,000 working at say 43 hours, and cut down by a 40 hour week, perhaps 36 employment would jump to 325,000.

In the face of this demonstration of how considerably employment might be increased by lowering the hours of work per week, industry's representatives asserted that non-fluidity of labor generally, and the relatively quick exhaustion of trained workers in any locality, would with a 40-hour week create bottle-necks. The highly integrated character of steel operations made it impracticable with present available supply of skilled and semi-skilled workers to institute a maximum 40-hour week. The Administration members argued that the industry exaggerated the difficulty of getting skilled labor; and even though it were true that there were not at the time sufficient trained men to run the mills at a maximum 40-hour week, the situation could be remedied. Several suggestions were made as to how the necessary supply of trained workers could be created. (*)

(*) Summary of National Recovery Administration Division of Research and Planning. The Labor Provisions of the Steel Code reported by Victor von Szeliski, August 19, 1933.

Following a report of lack of progress, the President entered the discussion. (*) After the interview the Administrator declared that he was prepared to "go to the mat" with the steel industry. (**) However, at this point the matter was placed before the Labor Advisory Board at an extraordinary night session on August 18. The Board finally approved the labor provisions of the code with the following memorandum:

> "While members of the Labor Advisory Board believe that higher standards of labor should have been achieved in the Steel Code, they are gratified that the eight hour day is about to be substituted for the longer work day in this industry. In view of the great possibility of having the steel industry come under a code of fair practice immediately, as Chairman of the Labor Advisory Board, I hereby approve the Steel Code." It was signed by Leo Wolman.

The code itself was approved on August 19, 1933, by the President of the United States. As finally signed it differed but little from that submitted for hearing. It provided a forty hour week, with averaging of hours over a six months period. However, the maximum working time per week was set at 48 hours and six days. It was affirmed that "on or after November 1, 1933, as soon as the plants shall be operating at 60 per cent of capacity, operations shall be adjusted so that, except as to executives, those employed in supervisory capacities and in technical work and their respective staffs and those employed in emergency work, the eight hours for all other employees may be established." These provisions fell far short of the demands presented by the Secretary of Labor and the A. F. of L.

V. Conclusion

The negotiations of the above codes are illustrative of the unsuccessful efforts made in a number of industries to reduce basic hours. Organized labor pushed insistently toward this goal. The administrative officials were not overzealous in reducing hours below forty after the basic precedents were established. In none below forty after the basic precedents were established. In none of the four were major changes in basic hours effected. The most outstanding case in this group was the iron and steel industry.

(*) On August 16, 1933. The conference included the Administrator of the NRA, Myron Taylor, Chairman of the U. S. Steel Corporation and Charles Schwab of the Bethlehem Steel Corporation. (Chicago Daily Tribune, August 19, 1933.
(**) Washington Herald, August 17, 1933.

CHAPTER XIV

REASONS FOR APPROVAL OF CODES WITH NO MODIFICATION IN BASIC HOURS

The survey of the efforts at the reduction of hours indicates that in many of the early codes, serious effort was made to reduce hours, especially by labor. The results were limited. In only 9 codes were hours reduced from those originally proposed, whereas in 6 codes hours were actually increased over the original proposal.

Developing policies in the first hundred approved codes were brought out in the reasons presented to the Administrator or to the President of the United States for approval of the other 85 without changing the basic hours. The reasons noted in the letter of transmittal were frequently not those governing approval, but were more typical of rationalization of a course already taken. However, they did indicate the type of modification of basic hours policy which was acceptable to the Administration.

I. Financial Inability to Reduce Hours

One of the common reasons given for accepting the basic hours proposed by management was the industry's financial inability to meet the cost of shorter hours (*). The more typical arguments given were that income was limited, by law or type of enterprise, that the business was seclining, that demand for the product was particularly elastic and sensitive to price-change, or that shorter hours would cause large increases in price.

The first group comprised two transportation industries for which a longer than 40 hour week was approved. The Transit Industry Code provided for a 44 hour week for general shop employees and 48 hours for the operating force. The Bus Industry Code permitted a 48 hour week. The hours of the Transit Industry Code was approved as presented on the ground that the industry showed "a net loss of about $6,110,000 in 1932 as against net income of about $81,570,000 in 1929. Because of this financial situation it is believed that the burden of increased wages, which the industry seemed willing to assume under the code, is all that can be fairly expected at the present time"(**). In the motor bus industry,

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(*) The industries with code numbers where this reason was noted in the letter of transmittal were: Transit (28); farm equipment (39); electric storage and wet primary battery industry (40); luggage and fancy leather goods (42); saddlery (45); optical manufacturing (49); motor bus (63); toy and playthings (86); funeral supply (90); piano (91).

(**) Code of Fair Competition for the Transit Industry, Vol. II, Letter (September 15, 1933) from Mr. Malcolm Muir to General Hugh S. Johnson.

justific tion for the 48 hour week was based upon the ground that the industry "is competitive with steam rail passenger transportation not operating under the provisions of the National Recovery Act. To adopt a schedule of less hours at this time would undoubtedly result in a great hardship to the industry". In elaborating this argument, the Administrator declared that the industry "has suffered not only from the depression but also from its disadvantageous competitive position with other passenger carriers". The forty-eight hour week was recommended because it was all that could be reasonably expected at the time (*).

Similarly limited by competition was the saddlery industry. The basic forty hour week was approved for this industry because it was all the industry could bear "in face of competition for new material (from one-man saddlery and harness shops not subject to the hour restrictions of the code) and the possibility for repairing new material (**). Likewise, though for different reasons, the funeral supply industry qualified for a forty hour week, since "the forty hour week, with two hour tolerance, represents probably the maximum burden possible at this time without danger of disturbance of the orderly recovery of this industry". The Administrator further explained that the public's lagging buying power made it impossible for this industry to increase its prices, the only way for it to recoup its costs since it "cannot increase its business which is represented by the human dead". He concluded that further reduction in hours would therefore "demoralize the weaker element in the industry and result in further unemployment"(***).

In the toy and playthings industry the argument for not reducing the hours below forty per week was that the "industry would receive no benefit from the operation of the code until the year 1934 because of outstanding contracts which are made early in the year for the manufacture and delivery of products of the industry to the trade. The additional expense which must be absorbed due to the higher wages and shortened hours is a very definite burden until such times as these outstanding contracts are consumated"(****).

The second group of indsutries consisted of those declining in importance. Further reduction of hours was ruled out in the piano industry when a less than forty hour week was proposed because the volume of business in the industry had decreased radically. It was stated that "a greatly increased cost of labor would decrease still further the number of sales to consumers". A 10.6 hour week was estimated as necessary to raise employment to the 1929 level, but at "prohibitive" expense

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(*) National Recovery Administration Codes of Fair Competition . Vol. II, pp.108-109
(**) Ibid. Vol. I, p. 554.
(***) Ibid. Vol. II, pp. 422-423.
(****) Ibid., Vol. II, pp. 354-355.

since "the cost of labor constitutes about 33 percent of the total cost of the finished article" (*).

The third category included industries selling merchandise where the volume of sales was particularly sensitive to price. The luggage and fancy leather goods industry resisted reduction of hours below forty because "any drastic shortening of hours which would result in a material price increase of the final product would probably result in a shrinkage in volume which would tend to offset the expected increases in employment". An additional reason for keeping the hours at forty in this industry was the fact that unemployed skilled workers had "set up independent small shops in which they repair and actually produce a limited amount of luggage". This competition made further reduction in hours unwise. (**).

The report of the deputy administrator on the electric storage and wet primary battery industry indicated that "if the existing work is spread too thinly, average weekly wages and hence purchasing power will not be satisfactory. If wage rates are increased too much in order to offset this broader distribution of work, small manufacturers in certain sections of this country would be unduly penalized, with possible failure and further unemployment the result".

Finally, in the optical industry "the 40 hour week was approved as the most reasonable basis to use in establishing hours of labor for this industry in order to benefit the greatest number of wage-earners without unduly burdening the consuming public"(***). The same contention with respect to increase in price was made in the farm equipment industry. The farmers' purchasing power was said to be the key to the prosperity of the industry which had suffered with their financial condition. The deputy recommended that "too great a strain cannot be placed on the indsutry", since the depression's effects could not be overcome in a short period. (****).

The principal of setting hours in the code according to unemployment in the industry was modified by the Administrator in a number of cases because of fear of increased costs to the indsutry. In these cases, deviations from the prevailing policy standards were approved. Forty hours per week in most cases and forty-eight for the transportation

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(*) Ibid., Vol. II, pp. 436-437

(**) Ibid., Vol. I, p. 521

(***) Ibid., Vol. I, pp. 600-601

(****) Code of Fair Competition for the Farm Equipment Industry, Vol. II, Letter from Malcolm Muir to General Hugh S, Johnson, September 26, 1933 - A Report on the Code.

codes seemed acceptable. Though the hours were approved, no positive statement appeared in explanation of the acceptance of the specific hours. Nor was proof of the alleged justifying economic conditions exhaustively presented. Hours standards in the codes were apparently negotiated mainly on the basis of precedent and bargaining.

II Business Recovery as the Means for Reemployment

The second type of justification for accepting the industry's proposals was that reemployment to the 1929 level was dependent upon revival in the industries which furnished the demand for their product. This group consisted principally of capital goods industries.

This argument was significant because its logic was in direct conflict with the position of NRA. The Act assumed reemployment through the shortening of hours. Nevertheless many Administration officials and the Administrator himself, at times, seemed to follow the theory that in some cases reemployment could not be attained by reducing hours but only through general industrial revival. So widespread was the conviction within NRA that one Division actually undertook to have industries in its group increase their proposed basic hours on the theory that such increase would lower cost and thereby induce industrial revival. This occurred in the building materials, particularly, lime, plumbing fixtures, structural clay, limestone, terra cotta, and crushed stone and gravel and in the construction industries.

These agents of the N A argued that the only means of stimulating construction was to lower wage rates. They took the position that the problem of the construction industry was "to find a method of borrowing part of this excess of construction from the future to increase the volume in the construction industry immediately and as rapidly as plssible." This could not be done "if the codes, as submitted, create the uneconomically high construction cost which will result from wage and hour provisions together with provisions prohibiting selling below cost that includes overhead". To gove effect to the above proposal one deputy administrator gave the following instructions to the code assistants on methods of preparing codes for final approval:

> "Immediate shortening of hours of labor and setting of high hourly rates will not be productive of increase in employment and increase of purchasing power. Reasonable hourly rates of wages such as those proposed by the industry in former preliminary conferences shall be made effective September 1, 1934, at which time the maximum hours of approximately 20 percent more will be provided for. It shall also be stated that on September 1, 1934, based upon the volume and trend of the industry, a further increase in minimum hourly rates will be provided for in an amendment to the code to become effective March 1, 1935, and that on March 1, 1935, the maximum hours of work shall be thirty (30) per week".

The provision with respect to prevention of selling below cost would define cost as "direct cost, exclusive of any depreciation, insurance, taxes, reserves for contingencies or other purposes, interest on investment or selling or administrative expense." This plan was to create a "step-up" increase in cost of production which, in effect, is a guaranteed bull market for construction.

In actual concrete application it meant in the lime industry the alteration of the original proposal of a forty (40) hour week to forty-eight (48) and the recommendation of 37.5 cents and 30 cents per hour for the North and South, respectively, to 30 cents and 25 cents; for the plumbing fixture indsutry, a revision from thirty-six (36) hours to forty-eight (48), and a revision of a minimum wage scale of 40 cents to 30 cents and 25 cents, North and South respectively.

This point of view was supported within the administration. The cure for inactivity in the captial goods industry was thought to be reduction of wages.

The building materials industries to which this recommendation was especially presented rejected it as impractical and conducive of labor unrest. Organized labor and the staff of the Labor Advisory Board likewise resisted the proposal. During the last week of September, 1933 when the basic construction code and its supplements were being revised in terms of the formula outlined above, the labor adviser tried to induce the deputy administrator to change his policy. Testimony was presented to challenge validity of the official position. The Convention of the American Federation of Labor, on October 3, 1933, unanimously adopted a resolution to the effect that labor protested the action of the "officials of NRA" who "are attempting to undermine living standards under the cloak of an argument that such acting would stimulate building construction"(*).

The proposal resulted in general public discussion. The Wall Street Journal of September 30, 1933, carried the story that labor viewed it favorably. Another newspaper stated that the chairman of the Labor Advisory Board had discussed the plan with the Building Trades Union and found them amenable. This assertion was promptly denied, the chairman stating that he was unalterably opposed to it as unsound in practice and theory. Nevertheless the deputy's report on the Compressed Air Code carried the comment that the Labor Advisory Board and the Administrator felt that "the most effective" way of increasing volume of business for the industry was through the approval of the revised working week, i.e., lengthened to forty hours. The deputy reported "a shorter week and high-

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(*) Report of the Proceedings of the Fifty-Third Annual Convention of the American Federation of labor held at Washington, D.C., October 2,3,1933; p.482.

er rate would tend to defeat the very purpose of the Act" (*).

Organized labor in the construction industry vigorously protested this proposal. At the public hearing of the tile and mantel division of the industry on October 9, 1933, the deputy administrator asked labor and industry to adopt the principle of the "step-up" plan. In reply the union representatives charged the deputy with action not in keeping with the Act nor with the policies of the Administrator. They asked whether labor's brief would "receive any consideration at all". The President of the Bricklayers International Union declared:

> "Men who have battled to preserve wage rates in the face of the worst depression can continue that struggle if need be, inspired by the leadership found in the Recovery Act itself and in the heartening words of the President of the United States".

He proposed, instead of borrowing from the future at the expense of labor, to borrow by slum clearance and other similar public works. A conference between the deputy administrator and the union representatives on October 12, 1933, at which the former asked the latter to support his proposal, ended in complete disagreement.

Union officials told the Administrator, on October 16, that the deputy's proposals were "a negation of the very underlying purposes of the entire recovery movement." Organized labor prevented further application of this principle to the construction industry.

Though the proposals failed in both the building materials and the construction industry proper, it apparently affected administrative thinking. Official handling of the codes in the capital goods industry reflected the idea that the reduction of hours could not stimulate reemployment there. It evidenced the attitude that increases in hourly rates might raise costs, and that this must not be done through the codes. This attitude appeared in the letters of transmittal and

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(*) Code of Fair Competition for the Compressed Air Industry, Vol. II, Letter from Malcolm Muir, Deputy Administrator to General Hugh S. Johnson - October 9, 1933.

reports recommending the approval of codes in this division.(*)

Characteristic of the position was the report of the deputy for the Laundry and Dry Cleaning Machinery Manufacturing Industry Code, the only one of the group which set a 36 hour week. He declared that "it would be utterly impractical, and injurious to the industry to reduce hours of labor and raise minimum rates of pay to a point where 1929 purchasing power would immediately be restored. Only a restoration of the industry's normal business volume can effect this objective. Hence the wage and hour provisions have been allowed to stand as set forth in the code as originally submitted by the industry"(**).

Letters of transmittal for other industries contained similar observations. The conclusion for the plumbago crucible industry was that "only by increasing business which will depend largely upon activity in the metal industry where these products are used can this industry put a large percentage of employees back to work" (***). In the road machinery industry, dependence was placed upon "highway construction activities"(****); in the rock crusher, terra cotta, hair and jute felt and floor and wall clay tile industries, upon the " construction industry" (*****); in the buff and polishing wheel and buffing and pol-

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(*) The industries in which these letters of transmittal or deputy reports stressed this reason are: Electrical manufacturing (4); iron and steel (11); wallpaper (19); laundry and dry cleaning machinery manufacturing (34); textile machinery manufacturing (31); plumbago crucible (67);fertilizer (67); road machinery manufacture (68); hair and jute felt (73); terra cotta (74); canning and packing machinery (75); rock crusher manufacturing (76); steel casting (82); business furniture, storage and equipment and filing supply (88); office equipment manufacturers (89); floor and wall clay tile (92); buff and polishing wheel (96); buff and polishing composition (97).

(**) Code of Fair Competition for the Laundry and Dry Cleaning Machinery Manufacturing - Vol. II, Letter from Malcolm Muir, Deputy Administrator to General Hugh S. Johnson, September 25, 1933.

(***) National Recovery Administration Codes of Fair Competition, Vol. II, pp. 68-69.

(****) Ibid., Vol. II, p. 139.

(*****) Ibid., Vol. II, pp. 201, 233, 210-211, 444-445.

ishing composition industries, upon the revival of the "capital goods industries" (*); in the canning and packing machinery industry, upon the amount of "surplus vegetable fruit or animal products which might otherwise deteriorate" (**); in the fertilizer industry, upon "better prices of the products of agriculture (which) will permit the purchase of increased quantities of fertilizer" (***); and in the wall paper industry, upon the increased "consumption of wall paper" (****).

Letters of transmittal for other industries though not so explicit reflected the same underlying belief. The report on the proposed code in the textile machinery manufacturing industry concludes that an immediate increase through the employment of 4,700 persons would follow, but that this would not bring the total to the 1929 employment level. The deputy administrator observed, "the representatives of the industry (state) that with an improvement in the business situation and the number of workers employed within the industry will exceed the number on the payroll in 1929" (*****). They depended upon revival of business to bring employment to the 1929 level, rather than expecting shorter hours to cause reemployment and business recovery. This same reasoning appeared in the steel casting industry where it was observed that "should production reach the normal figure of 68 percent of capacity on the basis of a 40 hour week it is estimated the industry would require an average total of 54,209 employees or 143,000 more than were required in 1929"(******). Similar statements were made in the letters of transmittal for the electrical manufacturing, iron and steel, business furniture, storage equipment and filing supply and the office equipment industries(*******).

(*) Ibid., Vol. II, pp. 493-493, 502-503.

(**) Ibid., Vol. II, pp. 220-221.

(***) Ibid., Vol. I, p. 102.

(****) Ibid., Vol. I, 268

(*****) Code of Fair Competition for the Textile Machinery Manufacturing Industry, Vol. II, Letter from Malcolm Muir to General Hugh S. Johnson, September 21, 1933, - a Report.

(******) Codes of Fair Competition, Vol., II, pp. 300-301.

(*******) Ibid., Vol. I, pp. 45, 174; Vol. II, pp. 284 and 414.

III. The Existence of Precedents

Precedents not only determined the basic hours of codes in several cases where hours were increased over the original proposal but also affected many proposed codes and PRA substitutions which followed early statements of industry groups. This occurred in part because the industries preparing drafts had no well-defined standards nor officially approved provisions as guides. In consequence they had to rely upon existing approved or tentative codes that were considered acceptable. During negotiations, it frequently happened that codes were revised by the groups presenting them to incorporate more concessions granted recently in approved codes. A case in point was the merit clause modification of Section 7 (a). After the iron and steel and the automobile industries had inserted qualifying provisions with respect to Section 7 (a), most codes coming up for public hearing followed their example.(*) Even after the Presidential disapproval of such modification, many persisted in copying the clause as originally proposed by the iron and steel and automobile industries.

The importance of the hours provisions of the early approved codes as precedents and in their relation to the desire to establish competitive equality was frequently not indicated in the reasons for the approval of specific codes in the letters of approval. In a number of cases, however, there was specific confirmation of the influence of precedent (**).

The Cotton Textile Code was a dominant factor in the development of the other textile codes. The letter of transmittal of the Underwear and Allied Products Manufacturing Code, for example, declared:

> "The labor provisions in this code are substantially the same as the labor provisions in the Code for the Cotton Textile Industry. It is clearly evident that the labor conditions should be substantially the same premises that these yarns are knitted into or converted into underwear either partially or wholly finished. To establish any difference in the minimum wage or the working hours for employees in the manufacture of underwear would cause difficulty in the labor conditions" (***).

(*) See Raymond S. Rubinow "Section 7 (a) of the Recovery Act", Chapter IV, Work Materials #45.

(**) The industries in which the argument above was presented in the letter of transmittal or the report of the deputy administrator were: Underwear and allied products (28); textile bag (27); throwing (54); cap and closure (58); steel tabular and firebox boiler (62); paint varnish and lacquer manufacturing (71); nottingham lace curtain (78); and paperboard (100).

(***) National Recovery Administration Codes of Fair Competition Vol. I, p. 312.

Similarly in the textile bag industry the letter of transmittal repeated that a "number of textile bag manufacturers operate their own cotton mills and many of the bag manufacturing plants are located in textile areas, (and) the class of labor in the textile bag industry is similar to that in the textile industry". From these observations the conclusion is drawn that "the labor conditions should be substantially the same". (*) In the silk industry the problem appeared in the form of competition between the weaving of "rayon cloth in so-called silk mills" and in so-called cotton mills.

> "It was constantly testified that weaving must be on the same cost basis for both sets of mills."

It was noted that "the wage level proposed in this code is identical with that in the Cotton Textile Code under which the National Rayon Weavers Association is operating." In fact, the deputy stressed the fact that "objection to the wages and hours provisions relied on the contention that both the cotton code and the silk code, if adopted, would provide too low a level rather than that silk alone should bear a higher rate". Consideration of one section in the textile industry as a whole raised these problems. (**)

In the throwing industry, the problem of competition with other textiles was particularly acute. Consequently the mills throwing rayon for their own use were exempt from the provisions concerning special wage rates for night work. The need for coordination among the various textiles codes was specifically mentioned. (***)

The effect of previously approved codes was not limited to the textiles. The cap and closure industry secured approval of its labor provisions because they were essentially similar to the glass container industry with which it is "closely interrelated". (****) Similarly, the letter of transmittal of the Steel Tubular and Firebox Boiler Industry Code reported that "the labor provisions of this code conform, as agreed, to those of the Boiler Manufacturing Code". (*****) The labor provisions of the paint, varnish and lacquer manufacturing industry were declared adequate since they were "generally in line with

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(*) Ibid., Vol. I, p. 363, - similar observations to be found in letter of transmittal for nottingham lace curtain industry - Vol. II, p. 254.

(**) Ibid., Vol. I, pp. 588-589.

(***) Ibid., Vol. I, pp. 644-645.

(****) Ibid., Vol. II, p. 23.

(*****) Ibid., Vol. II, pp. 58-59.

approved codes employing labor of the same quality and under similar conditions." (*) The paperboard industry secured modification of its labor provisions to conform with those of the paper and pulp industry since "the process of manufacture is identical . . . and working conditions are the same in both industries". This similarity between the two codes obtained even in spite of the paperboard industry's willingness to set higher minimum wage rates than those proposed in the Paper and Pulp Industry Code. The hours were approved despite the recognition that "it is improbable that production will ever again reach the 1929 level" and reabsorption of the unemployed was consequently the more imperative. (**)

Precedent, though important in the first one hundred, became a still more controlling factor in the subsequent codes. In fact, code negotiation became a problem of studying competing industries and working out a set of equitable provisions. Individual industries wanted special advantages and in many cases succeeded in using precedent to secure lower standards. Representatives of the Labor Advisory Board used similar tactics to raise labor standards.

These early precedents exerted great influence. The individual industry approach tended to be lost in the argument over provisions in approved codes in competing industries. Bargaining in code negotiations was restricted and new efforts to reduce hours below the prevailing terms met with increasing difficulty unless supported by exceptional pressure within the industry or conflicting provisions among competing industries. Discussion of hours provisions in codes shifted from basic hours to seasonal and peak tolerances.

(*) Ibid., Vol. II, pp. 170-171.

(**) Ibid., Vol. II, p. 538.

IV Reemployment under Code in Respect to Employment in 1929

Certain codes were approved on the ground that the proposed hours would raise total employment within the industry to or above the 1929 level. The industries in this category were almost exclusively within the consumer goods and service group. (*)

Most numerous were the textiles including the cotton textile, rayon and synthetic yarn producing, and hosiery industries. In the cotton textile industry, the exception from the policy prevailing during June 1933 was granted because "the 40 hour limit would not only call back to work those who became unemployed since 1929 but would call for 13 percent more employees than the average in the peak of 1927 when 467,000 were employed.... The industry under the 4-hour week would presently absorb the available corps of textile workers and assuming a continuation of the present trend would provide openings for unemployed from related and nearby industries whose absorption would require a considerable apprenticeship". (**) Similarly in the hosiery industry the 40-hour week was accepted on the assumption that it would "reemploy workers skilled in the hosiery manufacture who have been forced to leave the industry and insure more nearly full time employment for the great majority of the workers who remained in the industry". (***)

The rayon producing industry in contrast was growing in importance and employed more persons in the days prior to the code than it had in 1929. The report estimated that "after giving effect to the maximum hours in the code, the numbers of employees will exceed by more than ten percent the greatest number previously employed in the industry".(****)

A similar situation was found in the leather and boot and shoe industries. For the leather industry it was estimated that "over 80 percent of the workers at current levels of operation will have their hours of labor shortened, and total employment in the industry will rise again to the 1929 peak levels 52,000 employees in leather tanning alone without any further increase in business. If business expands, as we expect it to, the employment will soon exceed even the 1929 peak for the industry. If we should go any further in shortening of the hours of work in this industry, there would be considerable danger of creating severe shortages of suitable types of trained labor in many plants, particularly those located in isolated rural communities. (*****)

(*) The industries in which it was indicated in the letters of transmittal or reports that employment under the code would attain the 1929 level or exceed it were: Cotton textile (1); rayon and synthetic yarn producing (14); fishing tackle (13); hosiery (16); leather (21); oil burner (25); linoleum and felt base (30); boot and shoe (44); bankers (47); mutual savings banks (52); copper and brass mill products (81); soap and glycerine (83); washing and ironing machine (93); stock and exchange girms (95); asphalt shingle and roofing (99).

(**) Ibid, Vol. 2, p. 5.

(***) Codes of Fair Competition, Vol. 2 - Hosiery industry report on a code for the hosiery industry - from Lindsay Rogers to General H. S. Johnson, August 25, 1933.

(****) Ibid, Vol. I, p. 225.

(*****) Ibid, Vol. I, p. 289.

In the boot and shoe industry a similar situation was said to exist, so that "the number of workers employed in the industry should reach the highest point of approximately 225,000, which was the number employed in September 1929. In view of the drifting away of workers from the industry that has taken place since 1929 it seems probable that some small amount of recruiting must result from the hours established. (*)

In the same category were also a number of industries recently organized or with new outlets for their products. These were the oil burner, washing and ironing machine manufacture, copper and brass mill products and asphalt shingle and roofing manufacture industries. In each case reemployment was estimated to approximate or exceed the 1929 level. (**)

The following mixed group of industries also belonged to this class: fishing tackle, linoleum and felt base, ice, and soap and glycerine industries. (***) The report on the last industry was particularly interesting in view of the declining employment due to the mechanization of processes. The deputy's report observed that "the reduction of hours as provided in the code to an average of 40 per week should increase total employment to a figure better than that of 1929 which will mean a reversal of the shrinking trend of the previous thirteen years." (****) Finally the finance group, including the bankers, mutual savings banks, and stock exchange firms were in this category. In these cases, specially trained employees were required and the 1929 level could be attained through a forty-hour week. (*****)

In these industries approval of the proposed hours was based on the original NRA standard of reemployment as the proper guide for the

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(*) Ibid, Vol. I. p. 543.

(**) Oil burner, Ibid, Vol. I. p. 341 - increase in employment estimated at 8,000; washing and ironing machine; Ibid Vol. II, p.463- increase estimated at over 3,250 employees; 100 in excess of 1929; asphalt shingle and roofing manufacturing, Vol. II, pp. 525-526 - rise to 6,950 of fifteen per cent more than the number in 1929; copper and brass mill products, Vol. II, pp. 290-291 - increase of 5,000 additional persons bring to 1929 level.

(***) Fishing tackle - Vol.II, Codes of Fair Competition; Report of August 16, 1933; linoleum and felt base; codes of fair competition Vol. I, pp. 390-391; ice, codes of fair competition Vol. II, Report of R.B.Paddock, October 12, 1933.

(****) Ibid Vol. II, p. 319.

(*****) Mutual savings banks: Code of Fair Competition for the Mutual Savings Banks, Vol. II, Report of Deputy Administrator A.D.Whiteside, October 3, 1933. Bankers: Code of Fair Competition for Bankers, Vol. II, Report of A.D.Whiteside, Deputy Administrator, October 21, 1933: Stock exchange firms: Codes of Fair Competition Vol. II, p. 482.

determination of hours. The smallness of the group complying with this standard indicated the extent of deviation from the original goal set.

V. Some Increase in Employment

In a final group were the host of industries in which the letters of transmittal merely indicated that some increase in employment was anticipated but also affirmed definitely or indirectly that the new employment level would fall short of the 1929 mark. No further explanations were offered justifying approval of the code.(*) Perhaps the most representative letter of transmittal of the entire series was that for the fabricated metal products manufacturing industry. It recommended approval of the code because "It materially reduced the normal hours of operation for employees in the industry...set up uniform wage and hours conditions over this broad industry and will assure an increase in the number of persons employed on the same basis of activity". (**)

In some instances the proposed hours clause was accepted by NRA because no information indicating the desirability of shorter hours was available. These letters of transmittal do not show any justification for the small contribution of these industries to reemployment. In several cases, the advisers' recommendation was cited as the basis of final approval.

VI. Conclusion

Failure to live up to early statement of policy in NRA procedure is disclosed by the huge proportion of industries in which basic hours proposed by management were not modified. This conviction is reinforced by the study in this section. The basic philosophy underlying NRA action was radically modified during the period of code writing. The original tenets were changed in practice by exceptions and supplementary principles. Only a small proportion of hour provisions in the codes were approved on the grounds that employment would be brought back to the 1929 level in the industry. In the other cases, one or another new

(*) The industries in which this position was expressed in the letter of transmittal were: Wool textile (3); lace (6); legitimate full length dramatic and musical theatrical (8); photographer (12); motion picture laboratory (22); salt producing (20); artificial flower and feather industry (29); lime (31); knitting, braiding and wire covering machine (32); retail lumber, lumber products, building materials, and building specialties trade (33), glass container (36); builders supply (37); women's belt (41); umbrella (51); handkerchief (53); marking devices (59); industrial supplies and machinery distributors trade (61); advertising specialty (65); gas cock (70); packaging machinery industry and trade (72); crown (77); novelty curtain, draperies, bedspreads and novelty pillows (79); asbestos (80); fabricated metal products manufacturing and metal finishing and metal coating industry (84); american petroleum equipment industry and trade (85); leather and woolen knit glove (87); men's garter, suspender and belt manufacturing (94).

(**) Codes of Fair Competition, Vol. II, pp. 330-331.

principle was introduced to exempt the industry from the rigid application of the first standards. Probably the most significant of forces leading to the modification of the 1929 employment goal was the adoption by a group of administrative officials of the belief that business recovery alone could bring about reemployment within their division of codes and that shorter hours would have adverse effects upon business by possibly raising costs unduly rather than increase employment. Moderate decreases in the nominal basic work week, they believed, was all that was permissable. In other cases financial inability to carry the cost of the shorter work week was recognized. In both of these instances, it was the probable wage increase that might have been required of the employer by the introduction of the shorter work week and the probable demand by labor for maintaining the same full time earnings that led the administrative officials to the above conclusions and to their coldness to the establishment of a shorter than forty-hour work week. Industry proposed the basic work week and NRA did not revise the basic hours. With the approval of increasing numbers of approved codes the strength of precedent became evident. Though not explicitly affirmed its force was widely evident. Precedent exercised its influence because it offered the industrial representatives an opportunity to present an apparently legitimate and cogent case in support of their proposal and in opposition to shorter hours. Any reduction of hours below forty, it was frequently observed, would create competitive inequalities since many industries were overlapping and competing for similar labor and markets. Industrial representatives at times proposed provisions and supported them by arguing that similar provisions had been approved by the administration in other codes rather than demonstrating their inherent merit.

As approved codes increased in number the approved patterns became the guides for the codification of new industries. The result was great uniformity in the basic work week established in NRA codes.

CHAPTER XV

The Basic Hours in the First One Hundred Approved Codes

With nine of the first 100 codes reducing, six increasing and 85 keeping the basic hours originally proposed by the industry the pattern of hours developed in the first one-hundred approved codes was as follows:

83 had a basic 40 hour week; of these
- 77 were originally presented with a 40-hour week
- 1 originally presented with 48 was reduced to 40 hours
- 5 originally presented with 35 or 36 were increased to 40 hours.

11 had less than 40 hours; of these
- 1 had a 27-hour week
- 4 had a 35-hour week
- 6 had a 36-hour week

also
- 4 had originally proposed their short week
- 7 had adopted their schedule as a result of negotiations

6 had a longer than 40-hour week; of these
- 1 had a 42-hour week
- 1 had a 44-hour week
- 4 had a 48-hour week

also
- 1 represented a reduction from 48 hours to 44
- 1 represented an increase from 40 hours to a range of 44 to 48
- 4 were as originally proposed by the industry.

These hours correspond more nearly to the provisions of the PRA substitutions than to those originally contemplated by either the thirty-two (32) hour proposal made in June by the Administrator, or to the thirty-five (35) hours of the original PRA.

Of the first 100 codified industries,
57 had first been governed by a PRA substitution; of these
- 48 had a 40 hour week in both substitution and code
- 3 had a 36 hour week in both substitution and code
- 2 had a 48 hour week in the substitution and substantially the same under the code
- 1 had increased hours from 33 in the substitution to 40 under the code
- 2 had increased hours from 36 in the substitution to 40 under the code
- 1 had increased hours from 35 in the substitution to 36 under the code.
- 1 had increased hours from 40 in the substitution to 44 under the code

The PRA substitutions were, therefore, percursors of the basic hour provisions of codes later adopted in the codes. The pattern was predominently a forty (40) hour week, with more exceptions for longer hours than for shorter hours. The variations between the PRA substitutions and codes with respect to seasonal and occupational tolerances were more marked.

Chapter XVI

ESTABLISHMENT OF STANDARDS

Experience in negotiation of the first one-hundred approved codes and their provisions influenced later codes. Precedent came to govern code writing and the need for establishing equality in competition and simplifying administration made for uniformity.

No new formulation of policy was made during the year 1933. The policy statement of October 25, 1933 which was made by the Policy Board and covered many controversial subjects did not refer to the problem of hours. At that time it was taken for granted that definitive policy statements were unnecessary and that bargaining and negotiations would tend to assure proper results. No account was taken of the fact that the leverages which the Administration possessed were few in number, and not of extraordinary strength and that administration officials were more prone to acquiesce to industry's demands than resist their proposals or support the counterdemands for sharp reductions in basic hours.

I. Policy Memorandum of February 1934

The first formulation of standards by the Administration on the basis of the experience was stated in the policy memorandum of February 13, 1934.(*) These conclusions developed out of a conference held on January 29, 1934 including representatives of the Labor and Industrial Advisory Board,(**) Assistant Administrators for Labor and Industry, and the Executive Officer.

The findings of this group were as follows:

1. Hours of Labor

It is recommended except for peak periods, maximum hours shall not be greater than 40 per week and 8 per day except in the following cases:

(a) Maintenance employees, firemen, engineers, shipping crews, truck drivers, and such like - 45 per week; 9 per day.

(b) Watchmen - 56 per week.

(*) Report of Alvin Brown to General Johnson.

(**) Dr. Wolman, Mr. Barrett, Mr. McGrady, Colonel Lea and Mr. Brown.

(c) Employees on emergency maintenance required for continued operation of plant and equipment, or for safety and health of employees; - no limitation, but time and one-half for excesses over 45 hour per week, or 9 per day.

(d) Executives and supervisory employees, and their secretarial assistants, foremen, and professional and scientific employees (but no others) receiving not less than $35.00 per week, and outside salesmen - no limitation. (*)

2. Peaks

It is recommended that exception to the above hours during peak periods should not be greater than 48 per week and 9 per day; and the peak allowance should not be longer than 12 weeks in any year.

3. Averaging of Hours

It is recommended that except upon showing of necessity hours may not be averaged, but must be definite for each week.

4. Days

It is recommended that codes should prohibit working more than 6 days a week, except in emergencies, and except that watchmen may be worked 13 days out of two weeks.

II. REVIEW DIVISION STATEMENT, July 1934

The approval of the forty (40) hour week in the above memorandum was concurrent with the Administration's move to induce industry to accept the ten percent (10%) decrease in hours, as announced by the Administrator in an address of February 27, 1934. Despite continuous effort to reduce hours on the part of the Administration and the Labor Advisory Board during the first half of the year 1934, the forty (40) hour week persisted as policy. As a result of the conflict between practice and hope, the Review Division reformulated guiding principles in July 1934; but its statement was not widely used within the Administration.

The formula read as follows:

"When the forty (40) hour week will not, in the opinion of the Research and Planning Division, restore employment to the 1929 level, in an industry, generally prosperous, whose labor costs are relatively low, it is permissible and desirable that the code authority be empowered to report

(*) Mr. Barrett for the Industrial Advisory Board objected to the limitation in paragraph (a) of 9 hours per day)

within some period as 90 days, the feasibility of further reducing hours with a view of providing employment for at least as many persons as in 1929. Such a procedure is consistent with the general purposes of the Act. When a code submitted for approval contains labor provisions not consistent with present policy, but an industry, operating under a code containing like or similar provisions, so that disasterous hardship and discrimination would inevitably result if the code in question was unapproved, it is permissible on a clear showing of such condition to allow such otherwise objectionable provisions." (*)

The forty (40) hour week was thus again confirmed and the limiting effect of precedents recognized. Further serious efforts at reduction of hours were not made. Though the desirability of such reduction in hours was acknowledged in the qualification that study was needed of cases raising the question of shorter hours, the statement had little influence since the process of code making was largely completed by July 1934.

Even the principle of reemployment to the 1929 level was less discussed as time passed. The report of the Assistant Deputy Administrator for Labor Policy to the Administrative Officer on the Package Medicine Industry Code presented May 14, 1934, stated: "until such time as the Administrator declares it a fixed industry policy that 1929 levels of employment should be favored it is within the discretion of the Division Administrator to obtain the highest degree of reemployment that he considers an industry can be burdened with." (**)

III. Review Officer's Final Summary

The Administrative policy as crystalized through the mass of negotiations and the development of codes was finally summarized in the following manner by the Review Officer:

"The limitation placed upon hours must necessarily be a compromise between the requirement of reemployment and the ability of the industry to adjust itself to the change in operating conditions. Experience under present codes shows that for the majority of industry, forty (40) hours per week is the lowest

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(*) Statement of Policy classified under Code Provisions. This compilation of policy is for use only in the Review Division, and although intended to represent the policy requirements of the Administration in respect to code provisions and related subjects is not to be considered as having been officially approved by NRA. This publication was dated July ,193 4.

(**) Compendium of Abstracts of Policy and Other Statements Issued by the Policy Group Mimeograph No. 1637, p. 14

maximum presently practicable. Accordingly, in the absence of convincing showing to the contrary, no employee will be permitted to work more than forty (40) hours per week.

"Where hours have been established in one code, there is a presumption for similar hours in codes of allied industries with like conditions, both because of the finding of fact in the first instance and because disparate hours might be discriminatory.

"Maximum hours may be fixed in particular industries at more or less than forty (40) hours upon convincing evidence or reason therefor. The following are some examples of acceptable cases:

(a) Continuous process industries 36 hours. Some industries operate continuous processes employing for shifts. In such cases, where it is practicable to suspend operation on Sundays, each employee will work 36 hours per week, and his hours may properly be so limited.

(b) Continuous process industries 42 hours. If the impracticability of suspension of operation on Sunday is demonstrated, maximum hours of 42 may be permitted.

(c) Retail Trades- Employment in retail trade has customarily been at longer hours than in industry generally, and to reduce such hours presently to a maximum of 40 is recognized as impracticable. The hours permitted should be reasonably proportioned to the customary hours of store operation."(*)

IV Conclusion

This statement concluded the development of policy on basic hours within the NRA. In many respects it was in direct conflict with early tests and standards guiding code negotiations and administrative action. It did portray the policy that evolved in practice over the course of the two year period. Some of the departures of this position from the early tenets of NRA were: (1) the principle of considering each industry individually was lost; (2) the early reluctance to set a uniform standard of hours except in general terms and as a possible maximum gave way to acceptance of a prevailing 40 hour norm for practically all

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(*) National Recovery Administration Division of Review Policy Statements Concerning Code Provisions and Related Subjects Works Materials No. 20, December 1935, p. 18.

all industries; (3) the declaration that each industry was to absorb its own unemployed was succeeded by emphasis upon similarity in terms of employment; (4) in place of the blunt disavowal of the precedent grew recognition of a uniform basis of operation for competing and overlapping industries (*); (5) insistence upon less than 40 hours a week ceased even though such a program might encourage reemployment; shorter hours required as much justification as the longer week; (6) the belief in reducing hours to effect reemployment was qualified, in case of certain administrative officials, by the conviction that the capital goods industries should be excepted from such reductions; (7) the enthusiasm for reemployment through the shortening of hours waned; (8) the goal of the 1929 level of employment receded; (9) industry by its pressure and NRA through its desire for rapid codification completely revised NRA policy; (10) and finally, the PRA substitutions generally foreshadowed the labor provisions of the final codes.

The policy as above stated grew out of the experience of code making. It reflected practice rather than goals; it suggested what was really being accomplished rather than guides for future revision.

In a study of 557 codes, 19 joint AAA and NRA codes and extra divisions of the Petroleum Code; it was found that 49 had adopted the 40 hour week. These industries employed 13,637 persons or 60.5 per cent of the total. (Table 13). In five industrial groups, i.e., metals, forest products, textile fabrics, construction and finance, the codes were exclusively "forty (40) hour week" codes. In seven additional industrial groups the codes consisted exclusively of those "under forty (40)" or "forty (40) hours" for the basic week. Non-metallic, chemical, paper, rubber, equipment, textile apparel, graphic arts. The longer than forty (40) hour week codes were significant in the transportation, retail trades and territorial codes.

(*) One of the most impressive administrative results of NRA history was the discovery of extensive and significant overlapping of processes among industries.

TABLE 13

DISTRIBUTION OF CODES AND EMPLOYEES AMONG INDUSTRIES CLASSIFIED

ACCORDING TO LENGTH OF BASIC WEEK

INDUSTRY GROUP	CODES				EMPLOYEES (in thousands)			
	TOTAL	Less than 40 hrs.	40 HOUR week	More than 40 hrs.	TOTAL	Less than 40 hrs.	40 HOUR week	More than 40 hrs.
TOTAL	578a/	41	490	47	22,554	1,494	13,637	7,423
Metals	12	-	12	-	576	-	576	-
Non-metallic	52	5	47	-	448	119	339	-
Fuel	5	1	3	1	1,429	292	603	534
Forest products	17	-	17	0	608		606	-
Chemicals, etc.,	33	1	32	-	228	1	227	-
Paper	32	1	31	-	294	12	282	-
Rubber	4	1	3	-	155	75	80	-
Equipment	92	11	81	-	1,684	474	1,210	-
Food	48	1	39	8	1,146	99	632	415
Textile fabrics	40	-	40	-	1,025	-	1,025	-
Textile apparel	45	11	34	-	996	352	644	-
Leather and furs	11	3	7	1	309	26	282	1
Fabricating	82	3	78	1	1,250	5	1,243	2
Graphic Arts	6	1	5	-	375	1	374	-
Construction	10	-	10	-	2,565	-	2,565	-
Transportation, etc.	13	-	3	10	1,751	-	12	1,739
Finance	5	-	5	0	374	-	374	00
Recreation	5	-	4	1	459	-	299	160
Service trades	12	-	10	2	854	-	614	240
Wholesale trades	24	1	20	3	1,127	15	877	235
Retail trades	23	1	8	14	4,779	23	683	4,073
Territorial	7	-	1	6	124	0	100	24

a/ 557 codes, 19 LPs, and 2 extra division of the Petroleum Code.

CHAPTER XVII

CODES WITH LONGER THAN FORTY HOUR BASIC WEEK

The prevailing trend toward the adoption of a forty hour work week was modified in several cases by establishment of longer basic hours. Forty-two NRA codes provided for a longer week (*). The factors determining approval of a working week in excess of 40 hours illustrated the circumstances, including precedent, that shaped code standards.

I. RETAIL GROUP

The most numerous group of codes with a longer work week were in retailing. The Retail Code (Code No. 60), written after extended consideration of the problems of the industry set a basic scale of hours ranging from forty (40) to forty-eight (48), per week depending upon the number of store hours (**). The position taken in the letter of transmittal for these codes was:

> "The hour and wage provision of the code are substantially the same as those adopted and approved in the Code of Fair Competition for the Retail Trade."

Following this statement departures from the pattern adopted were usually noted. Modifications related especially to seasonal and peak period tolerances adopted to the needs of the industry and to limitations on the numbers of persons working on an unrestricted weekly schedule. The Retail Solid Fuel Code provided for a forty (40) hour week for four months and forty-eight (48) hours for an eight months' period. This was acceptable to the industry largely because of the four months' slack season, but it did not otherwise alter the fundamental pattern of hours.

(*) For comparison, see Ruth Reticker, "Labor Provisions in NRA Codes" - Work Materials No. 35. The number given above is slightly smaller than that indicated by the latter study since five of the agricultural codes with longer hours have been omitted and the codes for the Wood Preserving, Stock Exchange and Investment Bankers were considered forty (40) hour week codes in this study, while the Air Transport and Commercial Aviation Industry Codes were noted as longer than forty (40) hour week codes. It is significant that such differences of opinion could exist with respect to the actual number of basic hours. The exemptions in many codes were so profuse that they affected the major proportion of the codes and nullified the actual basic week usually in the first section of the paragraph. In estimating the basic work week, it was necessary to determine the basic group of employees as well as define the provision which might legitimately be considered to represent basic hours and those which were seasonal tolerances. In many cases this determination was not easy to make. Furthermore, legitimate differences of opinion might exist because of the manner in which the clauses were written so that uncertainty appeared as to the actual meaning of the provision.

(**) Footnote continued on next page.

II. MOTOR SERVICE

A second group followed the pattern established in the Motor Vehicle Retailing Trade Code which had provided a forty-four (44) hour week. In these codes the possible conflict with the Motor Vehicle Retailing Code was definitely recognized. In fact the Motor Vehicle Maintenance Trade Code made special reference to it, and instructed the deputy to inquire into the sources of the conflict (*).

III. MOTOR TRANSPORTATION

A third group comprised the motor transportation codes. The Transit and the Bus Codes set the basic hours which were considered as the precedents in the later motor vehicle codes. In part the forty-eight (48) hour week for these codes had also been predetermined by the exemptions to truckmen and shipping employees from the basic hours of most codes. The motor transportation codes were governed by these occupational precedents as well as by the special motor transportation codes. The forty-eight (48) hour week with loose seasonal allowances permitting much longer actual weekly hours prevailed in these industries (**).

(**) Footnote continued from preceding page.

The codes in this group were: Retail trade (60); retail jewelry (142); retail food and grocery trade (182); retail farm equipment trade (197); retail rubber tire and battery (410); retail tobacco trade (466); surgical distributors trade (507); retail trade in the Territory of Hawaii (525); and retail meat trade (540). In this class was also the Filling Station Division of the Petroleum Code.

(*) The codes in this group were: Motor vehicle retailing (146); motor vehicle storage and parking trade (147); wholesale automotive trade (163); motor vehicle maintenance (543); and the auto rebuilding and refinishing trade (544).

(**) The codes in this group were: Cinder, ash and scavenger trade (191); - later amalgamated with the Trucking Industry Code; domestic freight forwarding industry (162); trucking industry (278); and the household goods storage and moving trade (299); refrigerated warehousing (499).

Closely akin to the above group were the air transport (111) and commercial aviation (513) industries in which a forty-eight (48) hour week was established, and the merchandise warehousing (232) with a forty-five (45) hour week (*). The first secured approval of its hours because "the Post Office Department's mail payments which form the largest item of the airline income have been reduced approximately 28% for 1933" (**).

IV. SERVICE

In the service codes long hours, low wages and sweated labor conditions had prevailed prior to the NRA. In these industries competition with owner operators, whose self-directed labor could be controlled only through special opening and closing hours or similar devices, made the shortening of hours particularly difficult. Furthermore, these shops took on the character of the retail industry, serving the public and were frequently located in and about the same places and at times competing with the later (***). The letter of transmittal for the hotel industry contained the following statement:

> "The work hours may not be entirely satisfactory from a purely social standpoint but they represent a substantial reduction from the hours which prevailed in the hotel industry" (****)

The letter from the restaurant industry was almost identical (*****)

(*) National Recovery Administration Codes of Fair Competition Vol. V, p. 496

(**) Ibid., Vol. III, p.2

(***) The industries in this group are: Ice (43); hotel (121); restaurant (282); bowling and billiard operating trade (346); shoe rebuilding (372) and barber shop (398).

(****) National Recovery Administration Codes of Fair Competition Vol. III, p. 176.

(*****) Ibid., Vol. XI, p. 510

> "The work hours may not be entirely satisfactory from a purely social standpoint but they represent a very substantial reduction from the hours which prevailed in the restaurant industry and will result in an estimated employment of between 125,000 and 150,000 persons in the industry above the number employed on June 15, 1933. The code provides for a six day work week which is a definite innovation in the industry."

V. OTHER CODES

The wholesale food and grocery industry, unlike the other wholesale codes, obtained a forty-five (45) hour week on the same reasons that similar retail stores secured a forty-eight (48) hour week and general stores a forty (40), forty-four (44), forty-eight (48) hour range. The perishability of the articles suggested the justification for the longer week. The Toll Bridge Code contained a nominal forty-four (44) hour week with exemptions to the operating and maintenance workers, the major group of employees, permitting forty-eight (48) hours. Acknowledgement of the forty (40) hour principle was due to the insistence of the labor adviser for the code. In this case financial capacity and the comparability with the transportation and service industries appeared to justify the forty-eight (48) hours in the eyes of the Administration.

The forty-five (45) hour week in the artificial limb manufacturing industry resulted from a long controversy over the service features of the industry. The management declared that they had to service customers on Saturday morning and therefore required the additional five hour tolerance over forty (40). They emphasized that these were not hours for manufacturing but for service. The Advisory Boards, however, disapproved of the suggestion. As a result the final code was amended in the Executive Order to provide for a forty (40) hour week. However, the industry did not accede to the change. Protests were lodged and the industry refused to accept the code. Investigations were made to determine the justification for the desired partial extension. The administrative Official succeeded, over the protest of the Advisory Boards, in having the amendment for forty-five (45) hours approved.(*)

Another group comprised the territorial industries including six codes with longer hours than forty (40).(**) The conditions in these territories varied strikingly from those of continental United States so that the hours established in these codes represented reductions for the employees concerned, even though the hours were longer than those in the other codes.

Several other individual codes had longer hours for reasons

(*) History of the Code of Fair Competition for the Artificial Limb Manufacturing Industry, Compiled by R. M. Davis, pp. 8, 26, 33, 44.

(**) Retail trade of Hawaii (553); baking industry of Puerto Rico (555); manufacturing industry of Hawaii (550); restaurant trade of Hawaii (553); graphic arts industry of Hawaii (554) and wholesale and retail automobile sales supply repair maintenance and service of Hawaii (556).

peculiar to the industry. The average forty-four (44) hour week was approved for the fishery industry "because of the perishable nature of the product handled in the industry and the uncertainty as to the time when the product is available for processing". However, it was provided that, "some division of the industry will (find) it necessary to revise these provisions to make them applicable to these respective divisions".(*) Several of the code supplements established a 40 hour while others provided for a 48 hour week.

The Fur Trapping Contractors' Industry Code did not provide for any maximum hours because the industry "is purely a seasonal one, operating only three months in the year, and during this period weather conditions may either lengthen or shorten the number of hours worked in any one day".(**)

CONCLUSION

The codes which provided for a longer than forty hour basic work week were, with the exception of the territorial codes, for non-manufacturing industries. The industries concerned were almost exclusively in the service, retail and transportation group, or they were essentially out of the ordinary, as in case of fishing and fur trapping. Even in the case of the artificial limb industry extension of the week beyond forty hours was designed to provide a tolerance for the service branch of the industry. The early codes in these industries set the precedent for basic hours in those approved at a later date. The codes in this group which did not follow a precedent did so on account of special circumstances, such as perishability of products or extraordinary seasonality, like fur trapping. Pre-NRA hours in these industries had been unusually long and the industries vigorously resisted further reduction of hours other than that adopted in the codes.

(*) National Recovery Administration Codes of Fair Competition Vol. VII, p. 330.

(**) Ibid., Vol. IV, p. 152.

CHAPTER XVIII

CODES WITH LESS THAN FORTY HOURS BASIC WORK WEEK.

An almost equal number of codes to those with longer hours were those in which shorter hours had been adopted. Forty-one (41) codes prescribed a less than forty (40) hour week. (*)

These codes provided principally for a thirty-five (35) and a thirty-six (36) hour week; (10) and (23) respectively. One established a twenty-seven (27) hour week; two a thirty-two (32) hour week; four a thirty-seven point five (37.5) hour week; and one a thirty-eight (38) hour week. The most significant industrial groups were apparel (11) and equipment and machinery (11), with the nonmetalic group, the leather and fur, and the fabricating groups following in importance. (Table 13).

The analysis of the circumstances determining the establishment of the shorter work week will be made in terms of the occasion when the shorter work week was adopted by the various industries. The causes for the shorter work week may be set forth as follows: (1) collective bargaining; (2) precedents with strong union influence; (3) precedents; (4) Administrative Officials and Labor Advisers; and (5) industry proposals.

I. Collective Bargaining.

The most outstanding of the factors leading to the establishment of the less than forty (40) hour week codes was the presence of a strong group of organized labor within an industry. However, such a group did not assure the attainment of the goal of such shorter hours. It has already been noted that three (**) of the nine codes in which hours were reduced over those originally proposed of the first one-hundred approved codes were attained by means of collective bargaining. The most dominant factor in the establishment of the shorter work week in many other codes was either union strength itself or in association with the force of precedents already established in unionized industries. (***)

The most important industries in this group are the apparel industries. Organized labor was particularly effective in bargaining in these industries. They amassed their entire strength for the negotiations of these codes. They clearly recognized that the code results would in part determine the character of the local agreements. Like the miners they associated the development of the labor agreement with the formulation of the code.

(*) The report by Ruth Reticker on Wage and Hours Provisions in NRA codes indicates a large number, 43. The difference is due to the fact that the above report is based on the hours in the final code. Changes made in the basic hours between those first approved and those finally approved in the code as recorded in the above report are as follows: change from 40 to 35 in the Bituminous Coal Code; from 40 to 36 in the Refractories Code and Cotton Garment Code; from 37.5 in the millinery industry and from 36 to 40 hours in the cement industry. The latter change was from a 36 average week with a 42 hour maximum to a flat 40 hour week. It may also be noted that a number of other industries had established shorter basic hours either for specific periods or for specific groups of employees such as the pyrotechnic industry (148); metal lath (344); infants and childrens' wear (373); and wrecking and salvage (318).

(**) Coat and suit; men's clothing, and dress industries.

(***) The industries in this group are coat and suit (5); men's clothing (15); dress (64); fur dressing and dyeing (131); pleating, stitching and bonnaz and hand embroidery (276); men's neckwear (363); millinery (151); print roller and print block (368); covered button (336); undergarment and negligee (408); Fur (4 women's neckwear and scarf (538).

cedents already established in unionized industries. (*)

The most important industries in this group are the apparel industries. Organized labor was particularly effective in bargaining in these industries. They amassed their entire strength for the negotiations of these codes. They clearly recognized that the code results would in part determine the character of the local agreements. Like the miners they associated the development of the labor agreement with the formulation of the code.

The unions in this industry (**) were well established in the principal and strategic markets of the industry and had had long dealings with employers in these areas. Under the favorable circumstances which existed at time of the NRA when national uniformity of labor provisions was envisaged and labor was being organized very successfully, the unions were particularly well situated. They could obtain the desired terms of employment for the principal markets and could depend upon the support of the employers in these regions in their efforts to raise the standards for labor in the other markets. This bargaining position was further strengthened by the addition of thousands of members to these unions in many of the outlying areas and many new branches of the apparel industries. Labor's demands in the negotiations of these codes was largely governed by the terms which they could effectively realize within the major markets in which they were well organized. In the above respects they differed radically from the position in which other well organized areas found themselves.

These unions were also aided in their negotiations by the fact that they sent down to the NRA some of their most experienced personnel. In fact, several persons attached to the labor organizations of these industries were on the Labor Advisory Board itself and actively participated in negotiations of many codes and familiarized themselves with its procedures. As a result of the strength of the union, the particularly strategic role of the dominant New York City unionized markets, and the sympathetic administrative officials, the administrative influence was strongly responsive to the active cooperation and aid of the labor advisers and representatives.

In the discussion of the individual codes, it must be borne in mind that they were being formulated almost simultaneously with all of the conflicting pressures being brought at once. The determination of the hours provisions was only one of a series of complicated elements in the negotiations of these codes.

(*) The industries in this group are coat and suit (5) men's clothing (15); dress (64); dressing and dyeing (161); pleating, stitching and bonnaz and hand embroidery (276); men's neckwear (363); millinery (151); print roller and print block(9368); covered button (336); undergarment and negligee (408); fur (438); and women's neckwear and scarf (538).

(**) The two chief unions were the International Ladies' Garment Workers International Union, and the Amalgamated Clothing Workers Union.

A. Millinery:

This industry had skilful union leadership. With a history of successful collective bargaining in the past, the industry had declined, and with it the union, in a period of bitter competition. It struggled with increasing seasonal unemployment. While a city industry, it was spread over many markets of which only the New York market was organized. It was estimated in early 1933 that thirty per cent of the industry, all in New York City, operated under collective agreements. Between 1929 and 1932 collective agreements were absent, but the union - The Cap and Millinery Workers - had taken a new start in 1932.

There were several associations in the industry but in May 1933, a new National Millinery Council was formed as an association of associations, but predominantly New York in interest and influenced by the state of unionization in New York City. On July 5, 1933, the Council presented a thirty-five (35) hour code. This was withdrawn, apparently on the question of representativeness. The Council proceeded to extend its membership, and on July 18, presented another code with forty (40) hours and substantial allowance of overtime.

At the public hearing of August 2, the most contested point was the proposed occupational minima. To try to settle the wide difference Deputy Howard prepared a compromise draft of his own, in which hours were left for later decision. Labor protested and negotiations proceeded throughout August. The assistant deputy then working on the code has since described the next step:

> "The impasse was broken by the Millinery Union. Labor had recognized before anyone else the fundamental controversy and had been conducting since the middle of August a vigorous campaign of unionization. As a result of that campaign the union consolidated its hitherto dubious strength in New York City and brought a majority of manufacturers in Cleveland, St. Louis, and Chicago under collective agreements. By mid-September the effects of the campaign on the code making process had become apparent." (*)

Early in October an agreement was reached and a new code drafted at a joint conference. Hours were compromised at thirty-seven and one-half (37½) per week, seven and one-half (7½) per day, with possible overtime for six (6) weeks in each season at a time and one-half (1½) rate, only on the recommendation of the code authority which was to determine the amount needed for each market. (**)

B. Fur Group:

Two codes in the fur industry are included in this group. The gains made by labor in this field were due to organization; and they were notable since they were won in the face of great difficulties. The chaotic competition in

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(*) Millinery Industry, by J. C. Worthy, p. 63. Work Materials No. 53

(**) See section five for labor hour amendment.

the industry after several years of depression; mounting unemployment in the main center together with claims of shortage of skilled workers in outside areas; the traditional exaggeration of seasonality; various degrees of unionization in branches of the trade, and a rising crisis of dual unionism. These elements made any code agreements in this field almost a triumph.

The two unions here were the International Fur Makers' Union, affiliated with the A. F. of L., and the Industrial Fur Makers' Union, both with elements of strength and at odds since 1926. However, in spite of their differences their combined pressure told for the same end in regard to labor provisions. (*) Early attempts of the various trade associations to combine and offer one code for the whole industry failed, and in each subdivision of the industry the employer groups divided to the end along union and non-union lines.

1. Fur Dressing and Fur Dyeing

Separate codes were submitted by two trade associations, one representing the union, the other the non-union shops. The code was to cover five industry divisions, in which the organized strength varied from complete unionism to none at all. The Rabbit Fur Dyers Association, without consulting labor, proposed a forty (40) hour week, and a forty-six (46) hour week for eight (8) weeks before Easter, and during July, August, September, and October.

The Fur Dyers Trade Council brought in a code, stating that its labor terms represented "full and complete agreement with the union." The code called for forty (40) hours per week for the six (6) seasonal months, thirty-five (35) hours for the rest of the year: in addition eight (8) hours overtime per week could be worked during seasonal peaks to take care of continual chemical processes.

In spite of the Council's claim of agreement with the union, both unions asked a thirty (30) hour week. A thirty-five (35) hour week had supposedly been in effect for a year in union shops, without much effect on employment. The industry admitted that average days of employment per year were not more than one-hundred (100), and that days as long as fifteen and sixteen hours were worked at times.

It was finally agreed to establish a basic thirty-five (35) hour week and seven (7) hour day. As for overtime a new provision was secured. During the thirty-five (35) hour week period all overtime beyond the daily and weekly hours was to be paid time and one-half ($1\frac{1}{2}$). During seven (7) weeks of each six (6) months period forty (40) hours per week could be worked with time and one-half ($1\frac{1}{2}$) overtime pay for any work in excess of eight (8) hours per day.

(*) The later settlement of this dual situation may be partly attributed to the NRA experience.

SOURCE: J. Brodinsky's "Negotiations of the Fur Code" (Typewritten)

2. Fur Manufacturing

In this code again the final hours agreed to represent a compromise between the conflicting interests of employing groups with the chief gain in the control and reduction of overtime. Again the pressure of the unions was very effective.

Two codes were presented. That of the New York Associations provided the basic thirty-five (35) hour week of existing union agreements; that of the western group a forty (40) hour week. After long code negotiations, delayed by the fact that the dispute between the two unions came to a head at this time, a final agreement was reached on the hours provision. To this end labor coordinated its effort for a thirty (30) hour week, and was upheld by the opinion of the Research and Planning Division that "it is practically impossible to effectuate a spread in employment without reducing the hours in the fur manufacturing industry to a ridiculously low level." (*) The immediate gains to be looked for, therefore, lay in equalization and restriction of hours as between industry groups. Though labor was not satisfied with the outcome, it had made gains nevertheless. Hours in the final code provision were: thirty-five (35) per week, seven (7) per day, five (5) days per week. Overtime at one and one-half (1½) times the normal rate of pay was to be used by members of the industry only if recommended by a regional industrial relations committee and granted by the code authority.

C. Pleating, Stitching and Bonnaz and Hand Embroidery

In this industry, a luxury service to women's apparel, union influence had declined during the depression, and some problems of dual unionism had crept in. There were eight (8) trade associations and a number of codes were submitted for the industry in the summer of 1933. However, two New York Associations represented about seventy-five per cent (75%) of the industry. The hours first proposed were similar to those proposed by branches of the apparel industries: a forty (40) hour week, eight (8) hour day, five (5) day week, with overtime not to exceed six (6) hours a week or seventy-five (75) hours for any six (6) months period. Even as late as the hearing, however, the Ohio group contended in a brief: "Since past experience demonstrates the fact that fifty-four or sixty-six hour weeks have been unavoidable during the past year in our western areas we should be permitted a fifty (50) hour week, twelve (12) weeks in each six (6) months period."

At this time the bonnaz workers' agreement in the Chicago area required a forty-four (44) hour week. By September this agreemtn was replaced with one requiring a forty (40) hour week. In New York the International Ladies' Garment Workers Union had been organizaing the scattered forces of the bonnaz groups, and in September through the mediatory services of Mr. Grover Whalen, the union signed new agreements with the two chief associations in the city.

(*) Research and Planning Report. March 1934.

After many weeks of negotiations hours were finally set: thirty-five (35) hour per week, eight (8) per day, a five (5) day week. No overtime was allowed, but the code authority was empowered to determine and recommend rules for overtime in the various markets to be later incorporated in the code. In this case the industrial adviser specifically used his influence against the overtime provision.

D. Men's Neckwear Industry.

This industry was operating in New York City under a union agreement. However, only fifty per cent (50%) of the industry was located there and the proportion of the production in this area had been constantly decreasing. (*) Unemployment of neckwear workers had been a serious problem in New York City, while in the newer centers there was a smaller surplus. The result was a conflict of interests in regard to hours and wages that required skillful labor statesmanship. The compromise necessary as to hours for the "outside" production areas concerned overtime. A thirty-six (36) hour week was agreed to; but it was provided that four (4) hours overtime above the thirty-six (36) hours might be worked for not more than eight (8) weeks in each six months period in instances where an employer could not supply his needs with unemployed neckwear workers in his community. Such overtime had to be immediately reported.

E. Covered Button.

This industry is a service and supply industry to women's apparel and the workers belong to the International Ladies' Garment Workers Union. Individual agreements were in existence covering a large part of the industry, but were not strong or well observed. Several of the largest of the New York firms were non-union. There was no trade association and the industry, fairly scattered through the major clothing markets, found cooperation difficult. The proposed code was drawn up by a professional proposed code maker. Hours proposed were forty (40) per week, eight (8) per day, with overtime of ten (10) hours during twenty (20) weeks of the busy season. Hours had previously run as long as sixty (60) and the busy season was short. But the industry accepted the thirty-five (35) hour week in the PRA and seemed to be prospering.

By October 1933, the International Ladies' Garment Workers Union had organized about ninety-five per cent of the workers in the Button and Novelty Workers' Union, and labor negotiated the terms of the code, through the union. Hours finally agreed upon were thirty-seven and one-half ($37\frac{1}{2}$) per week; seven and one-half ($7\frac{1}{2}$) per day, five (5) days per week; overtime at time and one-half ($1\frac{1}{2}$) for not more than sixteen (16) weeks each year, ten (10) hours in any one week, but not to exceed one-hundred-twenty (120) hours per year. The overtime rate was the chief gain over the union contracts. (**)

(*) See William Lawson - A Study of Wages above the Minimum in the Men's Neckwear Industry - Works Material 45, Part C.

(**) The crux of this settlement was industry's interest in price fixing.

F. Undergarment and Negligee Code

The question of hours here hinged on a limitation of the industry definition to coincide with union influence, with a result of raising standards for a larger majority of the workers. The underwear industry, closely associated with the cotton textile industry, had from July 21, 1933, operated under that code. Its own proposed code, including "all types of underwear" was heard August 11. The code setting a forty (40) hour week when approved September 18 seemed to exclude women's undergarments, but this dispute was never settled during NRA's activity. Other groups actively concerned in this field were the cotton garment and infants' and children's wear, both of which were then campaigning for separate codes.

Both the associations for the manufacturers of undergarments and negligees, newly formed for code making, presented codes in August with forty (40) hour provisions and long allowances for overtime. There were no previous negotiations with labor. The International Ladies' Garment Workers Union started organizaing vigorously in the summer of 1933. A hearing was held on September 5, 1933, for the undergarment industry. This was immediately followed by a strike in New York City resulting in the signing of agreements with the union. Administrator Johnson's letter of transmittal summarizes the situation as follows:

> "The code as originnaly submitted by the Undergarment League, Inc., in August, 1933 was a simple one - providing in general for a forty (40) hour week and a $13.00 basic minimum. The sponsorship was fairly complete and the code would have been quickly approved had it not been for the outbreak of a strike in the New York area which was terminated by the writing of collective agreements with labor. These collective agreements raised the scale of wages in the New York area in some cases as much as forty per cent or more and brought about a substantial reduction in working hours." (*)

At this point the Undergarment League, largely New York in interest presented a new code of thirty-seven and one-half (37½) hours, in line with the New York agreement. Classified wage scales were included to try to restore to a degree the previous differentials with-out-of-town manufacturers. The negligee group then affiliated with the League, for this code. From now on labor actively figured in the negotiations, which continued for months with the active leadership of the International Ladies' Garment Workers Union and the White Goods Workers' Union.

Meanwhile a large group of non-union manufacturers formed the Cotton Garment and Sleeping Garment Associated Manufacturers, attempting first to go under the Underwear Code and finally appling for admission to the Cotton Garment Code. The union was then faced with a choice. Mr. Dubinsky, President of the International Ladies' Garment Workers Union, decided to

(*) Codes of Fair Competition, Vol. IX, p. 494.

agree to a compromise. Manufacturers of one-hundred per cent cotton garments were allowed to withdraw. Thus the shorter week and basing points in wages were saved for the large majority of workers (27,000) in the industry. (*)

G. Women's Neckwear

This industry, concentrated to about eighty-five per cent in the New York area, was unorganized in every respect before the NIRA. It extended into the blouse field and into the pleating and stitching field, serviced the dress industry, but in turn it was subject to competition from the handkerchief industry, a still more unorganized industry than itself. Hours were very long, and homework had increased during the depression to large proportions.

An active association was formed, at first entirely of New York manufacturers; but every effort was made to bring in all groups. There was no labor organization.

The first draft of a code, August 28, 1933, proposed a forty (40) hour week, with forty-eight (48) hours for ten (10) weeks in each of the spring and fall seasons. Between that date and October 10, the International Ladies' Garment Workers Union organized the industry almost completely. On October 8, a union agreement was signed with the association, and over ten or fifteen individual agreements with small firms. Conferences were then held with the union and the Administration and a revised code was agreed to with hours substantially as in the final code. These were: a thirty-seven and one-half ($37\frac{1}{2}$) hour week, seven and one-half ($7\frac{1}{2}$) hour day, and a five (5) day week; overtime to be permitted up to ten (10) weeks each season, five (5) hours per week, under careful checking, with overtime pay at one and one-half ($1\frac{1}{2}$) times the regular rate.. A small group of western manufacturers stood out for a rate of one and one-third (1-1/3), though the larger differences were on wage rates.

Further negotiations in this instance were unusual. The association asked the union counsel to act for them in the final negotiations with the Administration. From this point on delay in this code's approval was the fault of the Administration - chiefly the Legal Division's query of the homework control provision. It was finally approved by the Advisory Council as one of the best control provisions devised. The responsiveness of this industry to cooperation, its quick and genuine organization, and its successful administration of its were noteworthy. (**)

(*) In spring of 1935, negotiations were in progress to reduce hours to 36; the Cotton Garment Code already having been amended to 36.

(**) The letter of transmittal reads: "the wages and hour provisions set forth in this code are in accordance with this agreement". (October 8, 1935) - Codes of Fair Competition Vol. XIX, p. 82

H. Print Roller and Print Block Manufacturing Industry.

The one industry in this group outside of the apparel division was the print roller and print block manufacturing industry. It is a small industry employing about 300 persons. Organized labor was well entrenched in the industry and had long standing relations with the industry. While the code had been originally presented for a forty (40) hour week and labor had asked for a thirty (30) hour week a mutually satisfactory compromise was developed at a post hearing conference at which the thirty-five (35) hour week was accepted. A thirty-four per cent increase in employment was forecast by this reduction in work. (*)

II. Collective Bargaining and Precedents for Shorter Work Week.

In a number of cases, organized labor succeeded in establishing the shorter work week during the courses of the negotiations not only by means of its own power but also with the aid of the precedents which had already been established in the coat and suit, men's clothing, and the dress industries. The effectiveness of these precedents was enhanced by the fact that the unions in these industries also had large groups of members in other apparel industries, and these industries were either competing in the same market, or for the same labor, or were servicing the major industries. (**)

A. Blouse and Skirt

The chief desire of the manufacturers in wanting a separate code was to avoid the labor standards of the Coat and Suit and Dress Codes. The Coat and Suit Code had included all skirts. During July 1933, the deputy administrator tried to persuade blouse manufacturers to consolidate with the dress industry in its code. But the Dress Code, approved October 31, 1933, definitely excluded blouses except "when used with ensembles."

On July 27, 1933, the secretary of the newly formed Blouse Association wrote to the deputy that "Labor has not been consulted in the formation of our code." (***) He added that organization in New York was "negligible", in Philadelphia, "considerable." On August 15, 1933, a Blouse Code was submitted, setting a work week of forty (40) hours. Hours worked in the industry had been very long, variously estimated as from forty-four (44) to sixty (60). (****)

(*) Code of Fair Competition - Vol. VIII, p. 540.

(**) These industries are blouse and skirt (194); shoulder pad (262); merchant and custom tailoring (494).

(***) Blouse and Skirt History - Appendix p. 5.

(****) Ibid, Appendix, p. 8, 20, 64, 72.

Between the date of submission and the hearing on August 25, the industry was widely organized. (*) The union then came definitely into the picture. The day before the hearing the employers and the union conferred but without agreement. (**) At the hearing the Skirt Manufacturers' Association decided to join the Blouse Association in submitting a joint code. Between August 25, and September 7, 1933, a strike was called. Following the dress strike of the middle of August, it was successfully concluded with agreements signed with the two associations of manufacturers and also the contractor's association. The agreements, following the settlement in the dress industry, called for a thirty-five (35) hour week.

From that point the sole argument on hours occurred in regard to the overtime rate, which was set at one and one-third (1-1/3) in the draft for the September 7, hearing, Article II, Section 6, provided that the code authority might allow overtime of five (5) hours a week, one (1) hour a day for sixteen (16) weeks in any one year. Agreement on this and other points was not very far advanced by the hearing, "but was worked out in post hearing conferences." (***)

In this connection the report of the industrial adviser, supporting the union's contention for the time and one-half ($1\frac{1}{2}$) rate, is significant: "In the Dress Code the allowances for overtime is one and one-half ($1\frac{1}{2}$) times the normal wage. As these workers are engaged in practically the same operations and are members of the same union, the difference in payment will probably cause resentment." (****)

Overtime under this code was little used. Minutes of the code authority indicated permission was granted from time to time. But the report of the administration member, June 24, 1935, states: "Hours were reduced from 44.50 and 55 per week to 35, but through strict compliance on the part of a great majority of the industry, this worked no hardship. The code provided a tolerance in hours for peak periods, but due to union domination in the metropolitan area, the industry did suffer somewhat. It was difficult to secure union cooperation so that these tolerances could be utilized when needed."

(*) Ibid - History, p. 34.

(**) Ibid - History, p. 8.

(***) Ibid - History, p. 8.

(****) Ibid - History - Appendix p. 20.

B. Shoulder Pad Industry

This is a supply industry to men's clothing, though also to some extent to women's coats. Canvas fronts and shoulder pads are often made in the same shops; canvas fronts were under the Men's Clothing Code. Like all supply items both products are also made by manufacturers for their own use.

An association, formed in August 1933, applied to the Administrator as follows: "95% of the product handled by our industry is cotton...the hours and wages provisions of the Cotton Textile Code are applicable and should be applied at once." There must have been some reluctance on the part of the Administration, for the association presented its own code proposing a forty-five (45) hour week, with overtime not in excess of one (1) hour per day, five (5) hours per week, fifty (50) per year at the rate of time and one-half (1½). This in the light of a statement from the industry, that it had "not had forty (40) hours employment a week for several years." These terms were revised in the same month to forty (40) per week with the same overtime provision.

There seems to have been no labor organization in the industry, at least in the part of it outside of clothing plants. At the hearing on October 31 a union representative appeared to state that shoulder pad makers were already bound by the Men's Clothing Code. The hearing recessed for a ruling from the Legal Division which ruled against this position. After this decision he took the position that he would not object to a separate trade practice code, but labor conditions must be the same. Before final approval the Labor Advisory Board persisted in correction of the definition to read: "The articles enumerated herein when made in clothing factories or used in conjunction with garments manufactured in such factories, are exempted from the provisions of this code." The hours in the final code were closely related to those in the Men's Clothing Code; thirty-six (36) and eight (8); overtime of twenty-five (25) hours in six (6) months; one (1) per day, five (5) per week at time and one-half (1½) rate. (*) In this case the shorter hours were attained largely by the overlapping of this industry with the men's clothing industry and the persisting attention of organized labor which saw to it that no significant differences in labor provisions would appear.

C. Merchant and Custom Tailoring

We have an interesting example in the case of this industry of the influence of precedent in code making, against the efforts of the Administration. This industry's code was in charge of the retail division, which for long persisted in regarding the industry as purely retail.

The Men's Clothing Code included custom tailoring by definition, and this industry opposed a separate code for custom tailoring. At the time of the men's clothing hearing on July 26, 1933, some factions in the custom branch of the industry protested against inclusion of custom tailoring in

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(*) Codes of Fair Competition, Vo. VI, p. 233.

that code. Difficulties attending the Men's Clothing Code subordinated the problem. Meanwhile in August 1933, the National Associates of Merchant Tailors of America, an old organization with many local affiliates, approaching the Administration from the retail angle, received sympathetic consideration and encouragement. The hours proposed in this code - and in this case hours and not wages were the crucial point - were forty (40) per week, eight (8) per day, with a twenty (20) week peak period of forty-eight (48) hour per week, eight (8) hours per day, with a further allowance of daily overtime.

The union situation in this industry can be only briefly suggested. The old traditional union in the industry was the Journeymen's Tailor Union. It had, however, fallen to a low membership and was chiefly influential on the western coast. In the New York area workers were largely organized in the Needle Trades Workers Industrial Union, and the Amalgamated Clothing Workers Union. The Industrial Union inclined to support the Amalgamated Clothing Workers Union. It is supposed that the association consulted the Journeymen Tailors Union. At the same time this union went into the New York Area and signed an agreement with certain employers. The industrial union threatened a general strike.

By December 1933, the Men's Clothing Code Authority, the Amalgamated Clothing Workers Union, and the division of NRA responsible for the apparel codes could turn its attention to the situation. Long negotiations followed. The history of this code states:

> "The Labor Advisory Board and the Men's Clothing Code Authority began to assert their opposition. Mr. Sidney Hillman, then principal labor adviser on the code, insisted that no separate code for this industry was necessary and only after long and somewhat bitter negotiation he agreed to a code on condition that the industry accept a definition far different from the one originally proposed."

The definition originally proposed vaguely included men's clothes "made to individual measure." It must be understood there was no real conflict of interest between the strictly hand tailored clothes made by the genuine custom tailor and the mass machine production of the manufacturer. The conflict lay in an important and growing overlapping group. No one disputed that "tailors to the trade" belonged to the manufacturing group. They were included with a special allowance of overtime for their peak periods, under the Men's Clothing Code. But a large group of so-called custom tailors whose methods of manufacture were indistinguishable and who could not qualify under the definition of the custom code refused to operate under the Men's Clothing Code. The negotiations dragged on. In May 1934, the Assistant deputy administrator in the retail division, in charge of the code, resigned. A new draft of the code was completed that day and agreed to by all the interests. Its definition limited the adherents to hand work "except for the operations of a plain sewing machine," and set hours at thirty-six (36) per week, eight (8) per day, with peak period overtime to be determined each season by a joint committee

of employers and labor. (*)

III. Precedents.

Aside from the apparel trades groups, the effect of precedent in establishing shorter than forty (40) hours per week was comparatively slight. This fact stands out in sharp contrast to the importance of precedent in the group providing longer than forty (40) hours. This state of affairs obtained not because of the absence of precedents. There were several outstanding ones in the machinery group; shipbuilding and shiprepairing (36 hours); electrical manufacturing (36 hours); automobile (35 hours); oil burner (36 hours) and laundry and dry cleaning machinery manufacturing (36 hours). Except for the gasoline pump manufacturing and the knitting braiding and wire covering machine industries, the machinery codes through the first thirty-four (34), all established a less than forty (40) hour week.

The failure must be charged to the administrative officials who embarked upon a new philosophy which did not recognize the need for shortening hours in the capital goods industries. It has already been observed that in the case of the Gasoline Pump Manufacturing Industry Code, (36 hours), the first draft was modeled after the Electrical Manufacturing Industry Code, but the later drafts and revisions followed the outline of the other machine manufacturing industries with longer basic hours than forty (40) per week.

The three (3) industries where the effect of precedent is readily discernible are, fire extinguishing appliance manufacturing, motor fire apparatus manufacturing, and boat building and repairing. The first we have already discussed, - indicated the effect of the Motor Fire Apparatus Manufacturing Code which had been presented by the industry as a thirty-five (35) hour week to correspond to the Automobile Code. In the case of the boat building and repairing industry, the effect of the Shipbuilding Industry Code was readily discernible. In fact, every effort was made to iron out the differences between the two codes so that they would not conflict. The major difference in the hours provisions are in the seasonal tolerances. While the Shipbuilding Code allows forty (40) hours in any one week, the Boat Building Code allowed for forty-four (44). It is interesting to note the controversy which developed within the Labor Advisory Board. The majority of the Board contended that the same seasonal peak as in the Shipbuilding Code should be approved, while the Chairman of the Board maintained that since the industry "is highly seasonal and dependent upon service and price" the forty-four (44) week would be appropriate. (**)

(*) Of course this solution was chiefly useful in delimiting the problem. Without doubt the industry would ultimately have come under the Men's Clothing Code. In the amendments later under consideration both code authorities had agreed to a joint committee to pass on doubtful cases and to try to settle the problem of overlapping.

(**) Report of the Labor Advisory Board, March 23, 1934. Code of Fair Competition for the Boat Building and Boat Repairing Industry, Volume II.

IV. Administrative Officials and Labor Advisers.

It has been noted that in the early drive for codification the reduction of hours was kept uppermost in the minds of the administrative officials. Organized labor representatives played an active role in prodding the Administration along to secure such shorter hours, and in supporting the efforts of the officials by data or actual conditions within the industry. This conclusion would apply with particular appropriateness to the shipbuilding, petroleum and cast iron soil pipe industries. (*)

The efforts of Administrative Officials to obtain a shorter work week appeared to wane after the first one-hundred (100) codes were approved. By this time the forty (40) hour week had become dominant in most codes. In place of the conviction that further shortening of hours was necessary there was general skepticism, particularly in the capital goods industries about the efficacy of reducing hours to effect reemployment. In many industries the opposition of the deputies to the consideration of shorter than forty (40) hours was strong, and the strength of precedents was outstanding so that the labor advisers found it futile to contest the forty (40) hour week.

There were, however, individual cases of administrative officials whose convictions of the requirements of the original declared purposes of the Act persisted. The reduction of hours of five codes in this group was effected largely through the determination of the assistant deputy administrator to adapt the hours provision to the individual capacity of the industry. Wherever supporting data presented by the labor adviser and the information obtained at the public hearing suggested the justification of a shorter than a forty (40) hour week, he pressed for its adoption with the assistance of the labor adviser. He was so successful in this effort that more than fifty per cent (50%) of the total number of codes which he developed provided for shorter than forty (40) hours even though the hours provisions of the codes handled by other assistant deputies within the same division all had a forty (40) hour week. Had all NRA officials operated in a similar manner the hours provisions of codes might have been markedly different since there were also precedents for a thirty-five (35) or thirty-six (36) hour week. Many other industries were in a similar economic position to these in which a less than forty (40) hour week was adopted.

(*) The industries in which the reduction of hours was effected by the Administrative officials generally with the assistance of the labor adviser were the following: shipbuilding and shiprepairing (2); petroleum (10); cast iron soil pipe (18); pipe nipple (131); rolling steel door (171); cast iron pressure pipe (192); pasted shoe stock (413); canning (446); wholesale confectionery (458); public seating (477); upward acting door (502); bituminous road material distributing (530); music publishing (552).

The February and March 1934 Code Amendment hearings and the discussion of the "10-10" plan for the reduction of hours was also in part responsible for the shortening of hours. Directly associated with this movement is the thirty-six (36) hour week in the Pasted Shoe Stock Code, the Canning Code and the Wholesale Confectionery Code. (*) Since it was generally felt then that the reduction in hours was to be generally applied, the deputy, at the request of the labor adviser, urged industries to accept the reduction immediately. The above industries adopted the proposal. It may, however, be noted that the seasonal tolerances in the canning industry virtually nullify the shorter hours. In the seasonal packing branches sixty (60) hours was established as a basic norm. (**) The adoption of the thirty-six (36) hour week in the wholesale confectionery industry was outstanding since the other wholesale codes had adopted a forty (40) hour week, with the wholesale food and grocery branch on a forty-four (44) hour week.

The thirty-two (32) hour week in the bituminous road material distributing industry was acceptable to the industry since it affected only their unskilled employees numbering less than twenty-five per cent (25%) of their total force. It was adopted in exchange for more liberal conditions relative to their skilled employees (bituminous road material distributor operators) in whom the employers were principally interested and who constitute the backbone of their force. (***)

V. Industry Proposals.

A number of industries themselves proposed less than forty (40) hour codes to the Administration. (****) These industries were dominated by one of two characteristics: low use of factory capacity or continuous process operation based on a six (6) hour day. The provisions which they recommended permitted very liberal seasonal and peak tolerances, either through averaging provisions or specific peak periods or occupational exemptions so that they virtually established either a forty (40), forty-two (42), or forty-eight (48) hour or longer weekly maximum. Experience in the above industries suggest that there was no rigid observance of the basic work week. The provisions in these codes must be contrasted to the flat maximum hour regulations in the codes establishing less than forty (40) hours maxima developed through collective bargaining.

(*) National Recovery Administration Codes of Fair Competition · Vol. XI, p. 207.

(**) Ibid., Vol. XI, p. 28.

(***) Ibid., Vol. XVIII, p. 89.

(****) Electrical manufacturing (4); automobile (17); laundry and dry cleaning machinery manufacturing (34); structural clay products (123); portland cement (128); rubber tire (174); envelope (220); processed or refined fish oil (509); window glass (533); and flat glass (541).

VI. CONCLUSION

The circumstances which brought about the shorter hours in the forty-one (41) codes varied considerably. In all but ten cases, the reductions to the shorter than forty hour week were made during the course of code negotiations. The most vital element in effecting such shorter hours was organized labor. In at least fourteen codes, it was the aggressive policy pursued by organized labor, particularly in the needle trades, that effected the reductions. In most of these cases the negotiations of both trade agreements and codes were concurrent. The provisions of the code determined also the contents of the agreement. It was this association of the two which gave to the negotiations of these codes all the appearance of collective bargaining proceedings under governmental guidance. But aside from the influence of the union strength, most crucial was the precedent established in the three basic approved codes: Coat and suit, men's clothing, and dress. The fact that they had established the shorter week was most consequential. In these codes particularly, the influence was direct and determining.

The effect of precedent was also evident in other cases. Basic codes were instrumental in predetermining the hours of subsidiary and associated industries. However, in cases where the precedents prescribed shorter hours than forty, the Administrative official and the labor adviser had to be particularly vigilant in assuring observance of the weekly hours of the basic code. In the case of 13 codes the Administration official assisted by the labor adviser effected the reductions in basic hours. The industries in which these reductions were made are in no substantial manner different from those in which the forty hour week had been adopted. It was the effective use by the deputy administrator of the services of the labor adviser and the available information in the industry and his understanding of the terms the industry was in position to accept that accounted for these shorter hours. The codes with shorter hours than forty recommended by industry were in industries where there was low use of factory capacity or where continuous process operations prevailed.

CHAPTER XIII

REPORTS AT THE REVISION OF BASIC WEEKLY HOURS

Dissatisfaction with the prevailing code standards of basic hours was widespread. At the Convention of the American Federation of Labor in October, 1933, organized labor declared that "the hours of labor are too long to assure absorption of the millions without jobs". "Forty and forty-eight hours and even longer in those exempted groups - such as watch and repair crews - have been set by codes and agreements when the figures showed that no longer than thirty hours per week could be allowed if we are to find jobs for all". (*)

Labor's stand on the thirty-hour week was specifically reaffirmed in a resolution as "the most essential solution in coping with the unemployment problem." (**) This motion was also supported by the Building Trades and Metal Trades Department.(***)

I. ADMINISTRATION POSITION

Within administrative circles similar dissatisfaction was voiced. One official declared at the public hearing of the Wholesale Code that:-

> "Reduction of unemployment this winter is vitally necessary. If immediate improvement is not noticed it will probably be necessary to reduce the hours of all industries whether they are operating under codes or not." (****)

However, administrative officials saw many difficulties in undertaking the wholesale revision of the codes. It was observed that -

> "In many instances it has been difficult to bring about agreement to the hour reductions now in effect. An attempt at further slashes would stir up controversy the N.R.A. might find it almost impossible to surmount." (*****)

There was feeling in some quarters, that the hours schedule adopted had ended N.R.A.'s "period of immediate aid to employment".(******)

(*) Report of the Proceedings of the 53rd Annual Convention of the American Federation of Labor, October 2 to 13, 1933, p.69

(**) Ibid, p. 368

(***) Philadelphia Ledger (September 28, 1933)

(****) Statement of Deputy Administrator Whiteside, quoted in American Federation of Labor Weekly news Service (November 18, 1933).

(*****) Wall Street Journal November 16, 1933

(******) Ibid.

This conclusion impelled the Administrator to declare:

> "I am for a still shorter week than in any of the codes. I believe that even after this country is restored to normal prosperity there will be millions of unemployed in this mechanized land of ours ..... I am for getting those shorter hours just as soon as increased prices, increased profits, increased business permits."(*)

As the NRA discussion grew warmer, an independent body of engineers published the results of their investigation based on data for the major industries. The conclusions reported were:

> "Our study of working hours absolutely supports the doctrine of the short work period. The lower limit of the optimum range for maximum effectiveness has been found to be between thirty to thirty-five hours per week. The advocates of the thirty hour week are thus supported in their position by our findings."(**)

Toward the end of 1933 both organized labor and the Administration agreed that shorter hours were necessary. Labor asked for uniform legislation applicable to all industries, but the Administrator was opposed to a national program of maximum working hours. He observed that -

> "You can't lay down one rule for all industry. To try to impose a 30-hour week or any hour week universally on all industry would just raise the dickens. It simply cannot be done."(***)

In the midst of this discussion a statement of the actual achievements of the NRA program declared that -

> "As a result of this vast administrative process, the last accurate reports show that some 4 million workers have been restored to gainful employment."(****)

However, results were considered inadequate in view of the remaining volume of unemployment and the condition of industry appeared propitious for further action. It was for this reason that the February and March, 1934 conferences were conceived. They represented the first <u>real</u> effort to revise the codes in order to absorb more workers by shortening hours.

(*) Address by General H. S. Johnson, December 2, 1933, Central Labor Union, Philadelphia, Pa. (NRA Release No. 2136)

(**) Study by L. P. Alport and J. E. Hannum, conducted under the auspicies of the American Engineering Council. New York Times,(December 14, 1933)

(***) Washington Herald,(December 27, 1933)

(****) Quoted in American Federation of Labor Weekly News Service, (January 6, 1934). Report by the National Recovery Administration.

II. CODE AUTHORITY CONFERENCE

Early in January, 1934, when the conference was being planned, the Administrator, in his newspaper conferences, declared that steps would shortly be taken to reduce maximum working hours under all codes. He indicated that -

> "The average work week under the codes approved to date is forty hours and ... the Administration's goal would be to reduce that to an average work week of thirty-two hours. ....
>
> "The whole country, in my opinion, has got to go on a shorter work week."

He declared himself in favor of the eight-hour day, but indicated that a uniform week would be undesirable, as it would push many into bankruptcy and create "a kick-back that would nullify the whole effort". Nor did he approve of imposing uniform hours upon all industry.(*)

Much NRA interest during the next several months centered about the activities of the Code Authority Conference and its results. Invitations were sent out to code authorities to attend the Conference which was to include "the consideration in public sessions of the possibilites of increasing employment."(**)

By the beginning of February, the program for the conference had taken shape. The Administrator declared that among the chief objectives were the coordination of the code authorities to harmonize conflicts in closely related industries and the reduction of hours. He declared at his press conference on February 9, 1934, that:

> "American industry is geared to run on an eight-hour day and that the working week that would serve best would be one that was fixed on a multiple of eight."

Since most of the codes had an average of forty hours a week, exceptions being permitted for peak production, the General's remark was accepted as favoring the thirty-two hour week. However, he emphasized that "the reduction of hours should come from the experience of the industries themselves rather that governmental fiat". (***) He thought that:

> "We can't do anything about that (the bulk of unemployment in the heavy industries) here ... Whatever we do will have to be in the white-collar class and in the large measure in trade because consumers goods industries will employ people."(****)

(*) Baltimore Sun (January 11, 1934).

(**) NRA Press Release No. 3244.

(***) New York Times (February 10, 1934). Press Conference Report.

(****) Baltimore Sun, (February 10, 1934) - In accepting the capital goods industry argument, the Administrator considerably modified his earlier position.

The conferences were divided into two sections. The first was a public meeting beginning on February 27th and the second, a series of meetings of code authorities and code committees beginning on March 5, 1934. The same problem was addressed to both groups. Of particular interest was one group which dealt with the "possibilities of increasing employment; wages and hours; comparative situation of capital goods and consumer goods industries."

The General began the conferences with a statement of objectives. He declared that the "National Recovery Act is an attempt to spread employment, increase wages, cut out unfair and destructive trade and industrial practices and make definite the rights of labor." It had made progress to these goals but there was need of additional changes. The meetings were the occasion for "a round-up of every kind of helpful comment that has been produced as a result of six months of operation under the President's Reemployment Agreement and the codes." There were, however, twelve matters which required "immediate attention". One of these, and the one of most significance, was the "further reduction in hours per week and further increase in hourly wages."(*)

During the public meetings of the week of February 27, 1934, many speeches favored the shorter work-week.(**)

(*) Address on February 27, 1934 by General Johnson. Release No. 3507.

(**) Some of these were:
Harry Kline, R. C. A. - Victor Employees Union (30 hours);
W. Leader, Central Labor Union of Philadelphia (30 hours);
Alexander McKeon, American Federation of Hosiery Workers (30 hours);
F. T. Rockwell, Frigidaire Employees Association (25 hours);
Fred Hewitt, International Association of Machinists (30 hours);
Louis Waldman, Chairman, Public Affairs Committee of the Socialist Party (30 hours);
John J. Klaber, Federation of Architects, Engineers, Chemists and Technicians (30 hours);
C.W. Whitmore, Chairman, People's Unemployment League of Maryland (30 hours);
John P. Frey, Metals Trades Department of the A. F. of L. (30 hrs.);
Samuel Kapustin, Knit Goods Union of Philadelphia, (30 hours);
Sidney E. Goldstein, Chairman, Joint Committee on Unemployment (30 hrs.);
James J. Ryan, President, Amalgamated Association of Bridge, Structural, Ornamental Iron and Bronze Erectors and Affiliated Trades of America;
John P. Coyne, International Union of Operating Engineers;
C.L. Rosemund, President, Federation of Technical Engineers, Architects and Draftsmen's Unions, A. F. of L.;
Wm. Kuehne, Federation of Building Trades Workmen (30 hours);
Wm. Filene, Boston, Mass.;
Federation of Architects, Engineers, Chemists and Technicians (30 hrs.);
Edward B. Abbott, Amalgamated Association of Iron, Steel and Tin Wkrs.;
St. Louis Printing Pressmen's Union #6 (32 hours);
Adelard Dumas, Independent Sheeting Workers of America;

(Only with qualifications:)

Ray Hudson, Industrial Committee of New England Council;

 (Footnote cont'd. on next page)

They generally advocated a thirty hour week for most industries, though in individual cases 32 hours was also proposed. The principal proponents were union leaders. Opposition was offered by some representatives of industry. Among their contentions were (1) that industries could not finance this decrease in hours (*), (2) that there was a shortage of skilled labor (**), (3) that increases in prices would result (***), and (4) that such increased prices would lessen demand (****).

These conferences were only preliminary to the major meeting of Code Authorities on March 5-7, 1934. The personnel consisted almost exclusively of representatives of management. The meeting opened with an appeal by President Roosevelt to the code authorities to reduce hours in all industries:

> "You and I are now conducting a great test to find out how the business leaders, in all groups of industry, can develop capacity to operate for the general welfare. Personally, I am convinced that with your help the test is succeeding.....
>
> "With millions still unemployed the power of our people to purchase and use the products of industry is still greatly curtailed. It can be increased and sustained only by striving for the lowest schedule of prices on which higher wages and increasing employment can be maintained.
>
> "Therefore, I give to industry today this challenge: It is the immediate task of industry to re-employ more people at purchasing wages and to do it now. Only thus can we continue recovery and restore the balance we seek.....
>
> "Every examination I make, and all the information I receive leads me to the inescapable conclusion that we must now consider immediate cooperation to secure increase in wages and shortening of hours. I am confident that your deliberations will lead you also to this conclusion. Reduction in hours coupled with a decrease in weekly wages will do no good at all, for it amounts merely to a forced contribution to unemployment relief by the class least able to bear it. I have never believed that we should violently impose flat, arbitrary, and abrupt changes on the economic structure, but we can nevertheless work together in arriving at a common objective.

(**) (Note continued from preceding page)
Joe Kiss, Furniture Industry (30 hours);
V. H. Stevenson, International Molders Union (32 hours);
S. Klein, Retail Trade, Employer (40 hours-5 day week);
Charles Oberkirsch, Food Workers Industrial Union.

(*) Texas Retail Dry Goods Association, N. J. Motor Truck Association and Texas Retail Furniture Association.
(**) Chamber of Commerce, Kansas City - Master Electro Platers Institute of the United States.
(***) G. H. Houston, Baldwin Locomotive Works.
(****) H. L. Carpenter, N.Y.C. Committee on Subway Completion; G. H. Houston.

Government cannot forever continue to absorb the whole burden of unemployment. The thing to do now is to get more people to work."

Organized labor and several labor representatives on the apparel code authority appeared in favor of the President's program. The President of the American Federation of Labor concentrated on the points stressed by the President, saying:

"The problem before you is how we shall cope with the facts? What practical steps shall be taken to shorten hours and increase purchasing power? .... We have put 3,000,000 idle men back to work. Our problem is now to put the remaining 9,000,000 or 10,000,000 back to work, and I do not believe that the American people, having put their hand to the plow, will turn back. We must find the way, and we must consider the remedy, and when we have decided what the remedy really is, I think we must, like courageous men, apply it. We must make a choice between two or three things. First, shall we find a way by which we may put these 9,000,000 or 10,000,000 back to work, or shall we resign ourselves to this, it seems to me, awful fate of deciding to maintain on our relief rolls, an army of 10,000,000 unemployed, with all their dependents? Now, what shall we do. Shall we find them work, or keep? It is inconceivable that here in America we can successfully maintain an army of unemployed, amounting to 10,000,000 or 12,000,000 idle workers permanently.

"Nor what shall we do as reasonable, sensible men? I am certain, absolutely certain, from my experience in industrial and from my study of the economic situation that the one remedy for unemployment is a further reduction in the hours of labor. That reduction to be made in a wise and sensible way, with an increase in buying power. If there is anyone that can offer a better remedy for unemployment, I would like them to present it to General Johnson. ...

"When the codes were originally formed, were the hours set sufficiently low even in the light of facts then known and presented? In the impending revision of the codes, will you courageously reduce hours to the general level that will result in work for all?"(*)

Opposition to the increase in hours was set forth in an initial address at the general conference held on the first day, in which the objection was offered that:

"It is difficult to see how a compensating rise in wages in an industry which shortens its hours for special reasons can have anything more than a harmful effect on recovery on a small scale, that the general policy would have on a general scale, as already described."(**)

(*) United States News, V. II, #2, (March 16, 1934). Extra NRA Edition, p. 20.
(**) Statement of Mr. R. E. Flanders, Ibid., p. 11.

It was reported that this speech, coming from a member of the NRA Industrial Advisory Board, took on the air of administrative sanction, thereby bolstering the opposition. Many industrial representatives were reported to have spent half the night after the public hearing rewriting their speeches to include a stiff attack on labor's demands.(*)

The arguments presented by the lengthy discussions were not unlike those at the public hearing. It was maintained: (1) that industry could not finance the decrease in hours(**); (2) that decrease in hours would decrease purchasing power even though weekly dollar earnings were maintained(***); (3) that there was a shortage of skilled labor(****); (4) that increases in wage rates would have been covered by an increase in prices(*****); (5) that increased prices would lessen demand (******),

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(*) Business Week (March 7, 1934).

(**) The speakers presenting this view were as follows:

A. P. Haake, Furniture Code Authority;
Association of Newsprint Manufacturers of U. S.;
The Paper Industry Authority;
F. A. Lorenz, Steel Castings Code;
R. S. Yates, Steam Engine Manufacturers Code Authority;
Edgar Rickard, Newspring Code Authority;
Ellwood Kieser, Automotive Maintenance Code Committee;
John W. O'Leary, Machinery and Allied Products;
R. C. Patterson, Wholesale Automotive Trade Code Authority;
George C. Neidich, Millinery and Dress Trimming, Braid and Textile Industry;
James L. Fri, Director, Toy and Playthings Industry Code Authority;
Kidie Rover Manufacturing Co., - Telegram;
Challenge Machinery Co., - Telegram;
Peerless Novelty Co., - Telegram;
Superintendent of a Cotton Garment Plant, - Telegram;
Periodical Publishers Institute - Brief;
Buckeye Glove Co., - Telegram;
A. H. Hamilton Mfg. Co., - Letter
I. S. Adams, Knitted Outerwear Code Authority;
F. R. Hoadley, Gray Iron Foundry Industry.

(***)A. J. Hettinger, Research and Planning Division, N.R.A.;
Robert W. Irwin, Robert W. Irwin Co., Grand Rapids, Mich.;
A. P. Haake, Furniture Code Authority;
W. J. Reed, Diesel Engine Manufacturer's Association;
Richard Harte, General Tool and Implement Association.

(****) Col. George Brady, NRA;
R. R. Fauntleroy, Malleable Foundry Code Authority;
R. L. Putnam, Packaging Machinery Code Authority;
Sam Traylor, Kiln Coolers and Dryers Industry;
F. A. Lorenz, Steel Castings Industry;
W. J. Cronin, Automobile Mfg. Industry;
J. M. Wells, Porcelain and Chinaware Industry Code Authority;
Wallace Kimball, Packaging Machinery Institute Code Authority.

(*****)W. J. Cronin, Automotive Mfg. Industry Code Authority;
Sidney L. Willson Paper Industry Authority;
J. M. Wells, Porcelain and Chinaware Industry;

(Footnote cont'd. on next page.)

and (6) that foreign competition was so serious as to threaten American Industry were such a plan for shorter hours promulgated(*).

Some posed the question of the alternative between thirty hours and the commonly discussed ten percent reduction in hours in favor of the latter as "only a choice of evils"(**). There appeared throughout a disposition to accept the existing reduction in hours as reasonable but to fear further reductions. It was reiterated that -

"NRA has had a large measure of usefulness,"

but -

"The processes of recovery (from now on) are outside the NRA procedure so far as introducing any new untried or unusual methods of procedure."(***)

Some, while expressing approval of shorter hours, believed that the scarcity of skilled workers required an extension of basic hours for those employees. One such plan suggested a 36 hour week with permission for employment of skilled workers for 60 hours per week.(****) Another recommended a maximum ranging from 30 to 40 with unlimited overtime depending on the hourly rate.(*****)

Toward the end of the conference another general meeting was held at which the modus operandi was described by the Administrator. The problem was that of absorbing into industry the existing unemployed but not by any arbitrary manner. He indicated that in

"this emergency and until payrolls catch up with employment .... it is proper to encourage increased wages and reduced hours of work..... There are many (industries) that obviously can - and ought to - meet the suggestion to work on a 10 percent decrease in hours per week and a ten percent increase in hourly rates."

(*****) (Cont'd from preceding page)(also footnote 6)
P. A. Bloomer, Lumber Code Authority;
Richard Harts, President, Ames Baldwin Wyoming Company.

(******) I. S. Adams, Knitted Outerwear Code Authority;
Sam Traylor, Kiln Coolers & Dryers Industry;
A. B. Haake, Furniture Code Authority;
Fred H. Clausen, Farm Equipment Industry;
Robert Gayloe, National Machine Tool Industry;
R. R. Fauntleroy, Malleable Foundry Code Authority;
Arthur D. O'Shea, National Retail Code Authority;
W. J. Cronin, Automobile Manufacturing Industry;
J. M. Wells, Chinaware & Porcelain Industry.

(*) S. P. Hoyle, Fishing Tackle Industry;
Edgar Rickard, Newsprint Code Authority;
George G. Heidich, Millinery and Dress Trimming, Braid & Textile Ind.;
J. M. Wells, Porcelain and Chinaware Industry.

(**) United States News, V. II, No. 2, (March 16, 1934). Extra N.R.A. Edition, - p. 20, Remarks by A. J. Hettinger.

 (Footnote cont'd. on next page)

The Administrator recognized the need for resiliency in application of such a rule since in some industries "business is so slight that if they did adopt the rule, it wouldn't make any difference to employment".(*) In order to define these procedures for unemployment two committees of industry representatives were organized, one representing the consumers and another the capital goods industries. In their commissions they were instructed to find "some other way than any yet suggested" of creating jobs. Though this conciliatory challenge was made, the Administrator declared:

> "Merely for an administrative reason, our proposal is (when all the evidence is digested and a conclusion reached) that the final suggestions be announced as a Presidential ruling, governing all codes, and that a definite period be stated during which any industry, or company, which finds reasons why it cannot comply, shall be given an opportunity to present those reasons and why (as to that industry - or company within an industry) there should be a modification, stay or exemption. I must emphasize that this applies to all twelve points and not merely to the question of hours and wages."(**)

Turning the problem over to the industry groups, made possible a period of procrastination and discussion which converted the entire move into an abortive effort. A program founded on the right of individual groups of industry to withhold assent and/or the need of individual treatment inhibited action.

The adoption of an Executive Order for the direct application of the "10/10" plan was set aside for consideration of the reports of the above committees. (***) The most significant report was that made by the Consumers Industries Committee.(****) With respect to the proposal to reduce hours that committee reported as follows:

(1) that it disapproved of an Executive order applicable to all industries, with such exemptions as seemed appropriate, as "an arbitrary exercise of authority and unwise form of procedure"; (2) that the problem of increasing employment be approached through the "voluntary cooperation between the code authorities and the Government after prompt analysis of the peculiar problems in each industry to determine the necessary flexibility in working out the governing principle for each industry"; (3) that since "more than nine-tenths of the unemployment burden is outside the consumers goods industries,...it is obviously impossible to load the great bulk of unemployment upon the consumers goods industry"; (4) that

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(***) (Cont'd from preceding page--also 4 & 5)
Ibid., p. 22.
(****) George Brady N R A.
(*****) W. D. Kimball, Code Authority of the Packaging Machine Ind. & Trade.
(*) United States News, V. II, #2 (March 16, 1934). Extra NRA Edition, p. 18.
(**) Ibid.
(***) New York Times, (March 13, 1934).
(****) Consisting of Messrs. Kirstein, Williams, Morrow, Smith, Francis, Mead, Selby, duPont, Edlund, Stride, Herzog, and Sloan, March 15, 1934.

each code authority be invited to submit information necessary to determine its ability to raise wages and lower hours and to make the readjustments involved. (*)

Submission of this report raised the problem of the next move. Industry was opposed to the "ten-ten" plan and proposed the individual industry approach of this general order. NRA had appealed to them to accept a "self-imposed" shorter week in place of the thirty hour week bill which Congress was then considering. Inspired by a belief that "the Government will not 'crack down' and industry may take their time", industry had postponed action. Within the Administration, disapproval of this individual industry method was current as "not the most practical method to secure reemployment and increase purchasing power". A memornadum to the Administrator noted that the selection of industries would be open to charges of being "arbitrary and unfair". An alternative suggested was that "all industries subject to approved codes shall, within 30 days, reduce hours 10 percent, with a ten percent increase in hourly rates, provided that modifications and exemptions from this blanket order may be granted those industries which can demonstrate that such reduction in hours and increase in wage rates would not accomplish the purpose of the program."(**)

The refusal of the consumers' goods industries to support the "10/10" plan led the Administration to move more hesitantly. It soon yielded to

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(*) Report of the Consumers' Industries Committees (March 15, 1934) (Appendix G) In NRA Studies Special Exhibits Work Materials #45B.

(**) Memorandum from Leon Henderson to General Hugh S. Johnson, (March 14, 1934), Subject: "Revision of Hours and Wages." There is a pencilled note from the Administrator on this letter which reads:

"This is the method which we have used from the beginning and which to my mind is the only solution."

The plan proposed by Mr. Henderson, Director of the Division of Economic Research and Planning was as follows:

1. Issue order requiring 10% reduction in hours and 10% increase in wages, rates effective within 30 days. Provide that modifications and exceptions may be obtained by showing cause before Code Revision Board, set up as below.

2. Designate Board with one member from each Advisory Board, along lines of NRA Policy Board. This Board will have technical staff of industrial engineers to settle borderline cases.

3. Industry may appeal decision but must go to public hearing at which time the entire code will be opened for revision.

4. Publicity accompanying this order should invite acceptance from those industries who are willing to comply at once. It should also be designated to stimulate response from new companies who are willing to comply if the rest of their industry does so.

5. This Division is already at work on forms to secure information necessary to test the claims of those industries which request modifications and exemptions.

the demand for dealing with the problem on an individual industry basis. As a result, a questionnaire was addressed to 189 code authorities asking information "to help determine promptly whether your industry has the ability to meet the President's request for reducing hours 10 per cent without reduction of weekly pay." (*) Specific statistical data were requested.

The answers disclosed an attitude more clearly unfavorable even than that of the Consumers' Goods Industries. The majority of the letters in reply declared opposition to the proposal for the reduction of hours and a compensatory increase in wages. Of 44 code authority replies, only one, that of the paperboard industry, favored such action. Ten others were willing to consider the proposal under certain circumstances. One agreed to the principle if the kindred industries also adopted the provision (**). Others suggested a reduction of an hour per month (***); a forty-eight hour seasonal peak for a period of peak seasonal activity; (****) a forty-eight hour seasonal peak for a period of eighteen weeks; (*****) a general enforcement drive ; (******) (*******) minimum full protection;(********) protection against imports;(*********) opportunity to develop means for adjusting industry, (**********) or defining the extent of changes required. (***********) One proferred wage increases but no reduction in hours. (************) The other replies opposed reduction in hours and the increase in wages

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(*) Letter of H. S. Johnson, Administrator, to Code Authorities, March 28, 1934 (Appendix-H). In NRA Studies . Special Exhibits - Work Material No. 45-B

(**) Paper Distributing

(***) Hosiery

(****) Fertilizer

(*****) Precious jewelry producing

(******) Business furniture storage equipment.

(*******) Builders supply

(********) Chinaware and porcelain

(*********) Saw

(**********) Advertising specialty

(***********) Textile machinery

for one or more of the following reasons: (1) Competitive positions; (2) inability to absorb increased costs; (3) absence of skilled personnel; (4) impossibility of controlling hours; (5) inability to pass on increased prices; (6) and necessity for adjusting hours to industries services. (*)

(*) These industries were:

Asphalt and Mastic Tile Industry Code Authority
Fur Trapping Contractors' Industry
Photo-Engraving Industry Code Authority
Electrical Storage and Wet Primary Battery Industry Code Authority
Cast Iron Soil Pipe Association
Hair Cloth Manufacturing Industry Code Authority
Marking Device Industry Code Authority
Cotton Textile Industry Code Authority
Fishing Tackle Industry Code Committee
Nottingham Lace Curtain Industry Code Authority
Wool Textile Industry Code Authority
Folding Box Code Authority
Paper Distributing Trade Code Authority
The National Fertilizer Association Code Authority
Commercial Refrigerator Code Authority
Gas Appliance Institute Code Authority
Ladder Manufacturing Industry Code Authority
Toy Manufacturers of the U.S.A. Inc., Code Authority
National Association of Ice Industries
Throwing Industry Code Administration Committee
Hosiery Code Authority
Pipe Nipple Manufacturing Industry Code Authority
Excellsior Products Code Authority
Boot and Shoe Code Authority
Silk Textile Code Authority
Business Furniture, Storage Equipment and Filing Supply Code Authority
Piano Manufacturing Industry Code Authority
Gasoline Pump Manufacturing Industry Code Authority
Rayon and Synthetic Yarn Producers Code Authority
Salt Producing Industry Code Committee
Waxed Paper Industry Code Authority
Leather and Woolen Knit Gloves Industry Code Authority
Domestic Freight Forwarding Industry Code
Lime Manufacturing Industry Code Authority
Men's Clothing Industry Code Authority
Manufacturers of Pianoforte Industry Code Authroity
Glass Container Code Authority
Silverware Manufacturing Code Authority
Cap and Closure Industry Code Authority
Soap and Glycerine Manufacturing Industry
Shoe Shank Manufacturing Industry Code Authority
National Saw Code Authority
Paper and Pulp

Source: National Recovery Administration, Division of Research and Planning, Preliminary Study of the Ability of Industries to Reduce Hours by G.B.Galloway, April 17, 1934.

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These replies were not particularly suggestive as to a proper course of action for the shorter week program. On the heel of these replies came the report of the Durable Goods Industries Committee. (*) It commented on each of the 12 suggestions made by the Administrator. With respect to hours they recommended that "no attempt should be made to effect blanket increases in wages or reduction in code hours by Executive Order." As a unit they believed that "further increases in costs and resultant increased selling prices would tend to reduce the volume of sales and employment", inasmuch as the financial conditions of the firms would not permit absorption of any additional costs but would necessitate passing them on to the buyer. They claimed that there was a decided shortage of skilled labor. They stated further that the number of employees added and wage increases had substantially exceeded sales trends. (**)

Within the Administration definite programs were being considered in the event action was determined upon. One proposal contained the following suggestions:

"I. Cut hours of industries showing marked increases in profits or reduced losses or net income plus depreciation and interest.

II. Eliminate or reduce exemptions and exceptions to maximum hours provisions in codes.

III. Cut hours in adolescent industries and those in their prime.

IV. Cut hours in return for other reasonable concessions sought by industry.

V. Cut hours of those industries whose actual reemployment under their codes has fallen short of the reemployment they estimated at the time of code approval or lagged behind output.

VI. Cut hours of those industries whose reemployment record since 1929 has fallen short of the average reemployment performance of their group.

VII. Adopt measures to stimulate the capital goods industries which account for the bulk of current unemployment.

(*) Consisting of Messrs. G.H.Houston, J.W.Hook, L.H.Brown, F.R. Hoadley, C.R. Hook, R.W. Irwin, H.S. Kimball, W.J.Kohler, F.A. Lorenz, C.R. Messinger, C.C. Sheppard, H.G.Smith, G.P. Torrence, J.S. Tuttle, S.T. Voorhees.

(**) Letter of the Durable Goods Industries Committee of April 26, 1934 to General H.S. Johnson, Administrator, (Appendix-I). In NRA Studies Special Exhibits - Work Material No. 45-B

VIII. Cut hours of those industries whose payrolls have not increased in proportion to production.

IX. Cut hours and raise wages in industries whose rate of return on net worth exceeded 6 per cent in 1933.

X. Cut hours of industries in the light of inter-industry competition so as to preserve or readjust pre-existing competitive relationships.

XI. Eliminate averaging-of-hours feature in codes for consumer goods industries.

XII. Eliminate weekly limit on maximum hours and provide a penalty rate for overtime above normal weekly hours.

XIII. Ask each consumer goods industry to submit data essential to form a basis for an intelligent judgment in the matter." (*)

Another recommendation was to list the industries believed capable of reducing hours. (**)

(*) Galloway Report op. cit.

(**) The industries suggested by Unit Chiefs of the Division of Research and Planning as able to reduce their hours are as follows:

Food:

Beet Sugar
Southern Rice Milling
Macaroni
Coffee
Mayonnaise
Brewing
Distilled Spirits
Rectifiers
Wine
Alcoholic Beverage - Importing and Wholesale

Textiles and Their Products:

Wool
Silk
Rayon
Most of Minor Textiles
Textile Dyeing and Finishing (3 Codes)
Surgical Dressings
Apparel Industries (Except Cotton Garments)
Knit Goods - Hosiery
Underwear
Outerwear

Footnote Continued Next page (**)

Footnote (**) cont'd.

Building Materials:

Lumber and Timber Products
Glass - Flat
Asphalt Shingle and Roofing

Paper and Allied Products:

Paper and Pulp
Folding Paper Boxes
Paper Bags
Sanitary Napkins and Cleansing Tissue
Cellophane
Shipping Containers, Corrugated and Solid
Paperboard

Chemicals and Allied Products:

Chemical Manufacturing
Fertilizer
Furniture, and Floor Wax and Polish
Paint, Varnish, and Lacquer Manufacturing
Printing Ink Manufacturing
Soap and Glycerine

Minerals:

Iron and Steel
Aluminum

Leather and Its Manufactures:

Leather
Boots and Shoes
Luggage and Fancy Leather Goods
Saddlery Manufacturing

Electrical Manufacturing:

Master Code
Supplemental Codes

Transportation Equipment:

Automobile Parts - Master Code
Supplemental Codes

Amusements:

Burlesque
Carnival
Circus
Fairs and Expositions
Legitimate Theatre

Footnote Continued Next page

However, no action was taken. The movement began as a determined effort at the general reduction of hours to thirty-two was sidetracked. The public meetings had been centered about the "10-10" plan. Industry's resistance had been stiff. But a few individual industries had responded to the program suggested. (*) The Administration had been led to accept the principle of a "self-imposed" reduction by all industries. When this had failed, it had turned to the principle of individual industry handling. This plan had brought no greater results. Industries had refused to act individually. One industry could not be disassociated from all others. Stunned by this resistance, impeded by the belief that action must be voluntary, and recognizing that legal instrumentalities were inadequate, the agents of the NRA allowed the entire project to rest without action.

III. LABOR ADVISORY BOARD

The Labor Advisory Board carried on the effort to reduce hours. While there was still hope for administrative action, the Board requested the Administrator to take steps to secure further reduction of hours on the contemplated "10-10" basis. (**) Since no action had been taken nor reply received, the Board, two weeks after its first move, urged the Administrator to issue an order reducing hours in all industries simultaneously and decided to make a public issue of the matter. (***) To this end a brief was drawn up and submitted by the Board to the Administrator on May 17, 1934. It strongly urged immediate 10% reduction in hours and 10% increase in wage rates, accompanying its statement with an analysis of profits to show the industry's ability to

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Footnote cont'd (**)

Motion Picture
Motion Picture Laboratory
Non-Theatrical Film
Outdoor Amusement Parks, Pools, and Beaches
Radio Broadcasting

Miscellaneous:

Oil Burners
Glass Containers
Ice
Toys and Playthings
Scientific Apparatus

Source: Ibid

(*) Refractories, pasted shoe stock, wholesale confectioners, and canning.

(**) Minutes of the Labor Advisory Board Meeting, April 12, 1934.

(***) Ibid, April 26, 1934.

adjust to the program. It stated:

> "The reduction in hours will have the following results: first, in anticipation of increasing labor costs, prices will tend to rise, thus stimulating spending, as proved in the first experiment; secon ly, we estimate that it will reabsorb about a million and a half workers on the same level of production; third, the absorption of these workers should still further stimulate demand, production and employment."

It pointed out further that the original hours' provisions in codes were experimental and moderate; that it was time to take the second step; that during the first NRA period due to the National Recovery Administration, production had increased slightly while employment and payrolls had increased considerably more, reversing the experience of former recovering periods; and that with all manufacturing industries working an average of only 34.1 hours, a 36-hour week would not be difficult to initiate, in view od rapidly increasing profits.

In conclusion, the brief stated:

> "When the President called the meeting of the Code Authorities, he expressed his intention of proceeding further along this line ...As these meetings proceeded, elements not favorable to the program became more articulate and raised the traditional objection of not being able to do it..... We believe that the Administration made a serious mistake in failing to pursue its intended course. Weeks have passed and the psychological moment may well have been missed. We feel it necessary to say that the failure to proceed has not been due to the unearthing of any new facts, but rather to the ability of unsympathetic interests to capture the play and to weaken the purpose of the Administration....We urge the immediate pursuit of the "10-10" program". (*)

No response was obtained to this appeal for action. One last effort was made to secure action by presenting the matter to the Labor Policy Board. Here again, however, discussion of the issue aroused no response on the part of the Administrator and his immediate subordinates. The first real effort at the wholesale reduction of hours died aborning.

IV. JANUARY 1935 HEARINGS.

A less promising move was again made in January, 1935 when the

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(*) Petition and Brief of Labor Advisory Board for Reduction in Hours without decrease in Earnings on the "10-10" Principle. (6318) p. 6 (Appendix-J) In NRA Studies Special Exhibits - Work Material No. 45-B

National Industrial Recovery Board called a series of open policy hearings to collect evidence "on the operation of major code provisions and the advisability of amendment or continuation". The subject of the first hearing was price control and price fixing, announced December 17, 1934, and called for January 9, 1935. (*) On January 17, 1935, a second policy hearing was announced, on the subject of "employment provisions in codes". Fourth on the list of major problems suggested in the announcement for discussion at the conference was:

> "That the maximum hours provisions of the codes have made a definite contribution to reemployment and that the principle of limitation of hours should be upheld. The maximum hours limits actually set in the various codes may or may not be the test or optimum limits. However, any suggestion for change either in the direction of shortening or of lengthening the work week should be supported by evidence." (**)

The Labor Advisory Board had hoped that this hearing would lead to action; but as the conference went on it became evident that the hearings were purely fact-finding and that further reduction in hours was not imminent. The sole labor member of the National Industrial Recovery Board (***) at that time bore down day after day upon this aspect of policy; but his efforts in that body were practically single-handed. Other members of the Labor Advisory Board spoke to the same purpose. The President of the United Mine Workers, made a moving appeal for swift, effective action by the National Recovery Administration to open work to these and the other unemployed millions. He said in part:

> "Code maximum hours on the whole merely confirmed the normal working week in manufacturing industry. They placed no pressure upon employers to increase employment when production increased to normal. They exerted an effect only when production increased to capacity or to seasonal peaks. Maximum hours must be put into the codes providing for emergency needs, not the normal work week, in which 1929 production can be maintained in the 1934 work week.
>
> Second, shortening hours of work per week in order to put people back to work is the method contemplated by Congress and supported by the President in his speech to the Code Authorities last March. The advantage of the codes over legislation is that attention may be given to the requirements of individual industries. But instead of cooperating, almost to a man, industry is

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(*) NRA Release, December 17, 1934. No. 9292.

(**) Notice of Public Hearing on Policy of the National Industrial Recovery Board Relating to Employment Provisions. (January 17, 1935.)

(***) Mr. Sidney Hillman.

resisting any attempt to open up the codes to consider the basic hours provisions. This can only mean that the National Recovery Administration will no longer be a factor in the Recovery Program's further attempts at reemployment.

Emergency situations call for emergency action. The average hours per week in all manufacturing industries in October, 1934, stood at 34.5. Emergency action means something like reducing maximum weekly hours in the codes to those average weekly hours...I speak, Mr. Chairman, with heat on this subject;....I must ask you this direct question; how much longer are you going to continue with this do-nothing policy on this question of providing employment for every American who wants to work?

...Has any manager or leader of industry arisen in this country and advanced any substitute for the formula of organized labor, which calls for a shortening of hours?

If there are forty or forty-five million individuals gainfully employed in the United States, if there are only about eight or nine billion working days throughout the year available for distribution to these forty-five million people, then obviously from every human and economic standpoint there is only one answer in order to provide them with employment, and that is to permit them to share such employment as may exist." (*)

Despite the argument and discussion, no substantial results followed the public hearings. No new formulation of labor policy was issued. No general reduction of hours in industry was undertaken.

V. INDIVIDUAL INDUSTRY REDUCTIONS IN HOURS.

A. Bituminous Coal Industry.

Action taken to reduce hours resulted from the efforts of organized labor in individual industries. In the discussion of the bituminous coal negotiations the compromise had provided for a review od the hours provisions of the codes be inning with January 5, 1934. The forthcoming NRA report on the practicability and cost of a shorter work day and week was not ready on December 31, 1933, and the conferences were consequently postponed. When finally published, that report proved to be merely an arithmetical computation based on the theory that a 12½

(*) Statement of John L. Lewis, at the Hearings on Employment Provisions of Codes, NRA (January 30, 1935). 1672, pp. 1-5.

per cent reduction in hours would cause a 12½ per cent reduction in total coal tonnage. Conferences between operators and miners began about March 1, 1934. About 75 per cent of the total tonnage of the United States was represented. While these conferences were under way, the Presidential appeal for a reduction in hours was made. As a result an agreement was reached by the mine workers and operators to revise the bituminous coal code, putting into effect a 7 hour day and 35 hour week, with an increase in wage rates proportional to the reduction in hours. (*) The revised Appalachian Agreement Agreement was signed on March 20, 1934.

The conference between representatives of employers and employees and NRA originally scheduled for January 5th was held on March 26th. After a four day session, it was decided to hold a public hearing on the proposed amendment to the code as contained in the Appalachian Agreement. The amendment was approved on March 31, 1934 subject to modification. (**) At the public hearing the proposed reduction in hours was generally approved but there was considerable dissatisfaction with the wage provisions for the southern districts. A subsequent modification of the amendment brought about an adjustment of these rates. (***) The most significant reduction in hours effected under the NRA was achieved through the process of collective bargaining and had the approval of all elements in the industry.

B. Cotton Garment Industry.

The second outstanding example is that of the cotton garment industry. The code, as originally approved, called for an investigation into the effects on employment of the 40-hour provision, "so that the Administrator may determine whether or not the provisions of this article shall be changed". (****) A hearing was held on June 18, 1934, to consider this report and amendments to the Dress, Men's Clothing, and Cotton Garment Industries Codes. The Administrator announced that the above hearings showed that "no material reemployment" had taken place in this industry subsequent to the effective date of the code. "The forty-hour work week of the Cotton Garment Industry Code has resulted in unfair competition between members of the apparel industry under it and members under other apparel codes which have provisions for thirty-five and thirty-six hour work weeks." In order to effectuate the purposes of the Act, "to bring about more reemployment and correct the unfair competition existing because of the forty-hour work week of the Cotton Garment Code", the Administrator recommended "a reduction to thirty-six hours, and at the same time, ...a

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(*) Transcript of Public Hearings of April 9, 1934, p. 82
(**) National Recovery Administration Codes of Fair Competition, Vol. IX, p. 665.
(***) Ibid, Vol. X, p. 431
(****) National Recovery Administration Codes of Fair Competition, Vol. III, p. 92.

proportionate increase in the pay of employees so as to maintain the same weekly wage rates as is provided in the code as approved on November 17, 1933". (*) The amendments resulted largely from the activities of the labor organizations and the interested code authorities of industries overlapping the cotton garment industry. The industry, at first reluctant, finally accepted the terms of the amendment after court proceedings by a minority group had failed and an investigation by an NRA Board had reaffirmed the original Administrative findings. The amendment went into effect on December 1, 1934.

C. Millinery Industry.

The third industry in which changes in basic hours were made was the millinery industry. The original code had provided that "the provisions of this code shall be in force and effect only until May 15, 1934. Prior to that date, the code authority shall make recommendations to the Administrator in regard to the "continuance or amendment of any or all provisions of this code". As already indicated, the thirty-seven and one-half hours per week was adopted because of the feeling that it was "better to all (such a work week) at the present time and in the future to reduce the hours still further should conditions so require and so permit". (**)

While the code authority was formulating its amendment, organized labor threatened to strike for a 35-hour week. In New York City, they actually were on strike for a day. In the final amendment drafted by the code authority, a 35-hour week was proposed.

At the public hearing held to consider this proposed amendment on June 4 and 5, serious objections were "raised as to the proposed labor provisions", particularly the wage, but also the hours provisions, by some of the important markets and areas. At the request of the interested parties, including labor, the special Millinery Board, created by an Executive Order of December 15, 1933, was charges "with the duty and responsibility of making recommendations as to the labor provisions to be included in the proposed code. All interested parties agreed unanimously to abide by the recommendations of the Board". (***) The Board conducted a public hearing and special inquiries. On July 6, 1934, it reported to the Administrator the recommendations: That the 35-hour week should become a part of this code. The facts at hand

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(*) Amendment 7, National Recovery Administration Codes of Fair Competition, Vol. XV, p. 387.

(**) National Recovery Administration Codes of Fair Competition, Vol. IV, p. 4.

(***) Report to the President on Amendment No. 2, National Recovery Administration Codes of Fair Competition, Vol. XIX, p. 113.

showed that inadequate and spotty reemployment, in general smaller than anticipated. This was because "we have taken into consideration the fear of employers in markets away from metropolitan areas that they will not be able to secure help at the height of the season". But the Board had no misgivings on that score and stated; "we are satisfied that the provisions which we recommend in the code for an apprentice system, for overtime and other provisions will build up adequate, skilled working forces and that the introduction will cause no hardship to the industry".(*) These findings were upheld by the Board after various objections from the industry and labor groups had been presented. The recommendations were finally incorporated in Amendment No. 3 to the Millinery Code.

Other efforts were made to reduce hours, principally in the textile and apparel industries; but none were effected before the invalidation of NRA. In each case, it was organized labor, the Labor Advisory Board and code authorities of industries which experienced overlapping with less favorable labor provisions which were active in the effort to reduce working hours. The movement came nearest to successful conclusion where labor was strongly or significantly organized.

(*) Ibid, p. 113.

VI. CONCLUSION

NRA recognized that the hours provisions in the codes were hastily formulated. Wholesale revision was contemplated at various times. It was expected that the codes would be rewritten to make their meaning more specific and exact and to improve their enforcement and effectiveness in promoting reemployment. The original codes were developed under pressure of the desire for rapid codification. Industry was at the time financially exhausted and, in many instances, unable to meet actual or feared increases in costs. The Administration yielded quickly to the industry's demands. The first standards were given up. The forty hour week became the prevailing norm for basic hours.

The Administration and organized labor approved of the extensive code coverage and the application of limitations on working hours. Both, however, felt that as soon as recovery was discernible, further steps must be taken to assure reemployment of a greater number of persons. Action was conceived largely in terms of reduction in the basic hours of employment, following organized labor's attempt to secure a uniform thirty hour week by legislation with provision for exemptions in necessary cases. The Administrator disapproved of the six hour day and recommended instead an eight hour day. The thirty-two hour week therefore became the goal. Voluntary action by industry was sought.

Conferences were called in February and March 1934. At these, the President appealed for a reduction of hours. Evidence was amassed in favor of such action. Industry, supported by the position of the NRA Industrial Advisory Board, resisted this move. Committees of consumer and durable goods industries were appointed to obtain industrial cooperation, but they became the means of stiffening resistance in hours. The consumer industries' group suggested individual industry action instead of wholesale reduction. The Administration tried to follow this course and prepared elaborate studies for applying formulae to test the propriety of reducing hours in individual industries. Here again reductions had to be wholesale rather than by codes since industries were overlapping and intercompetitive and since consequently unfair relationships would result from different patterns, adopted for closely interrelated industries. Many of the problems in the apparel industries arose from these conflicts. Greater pressure for uniformity of hours existed than was previously suspected. Though large differences were written into the seasonal and peak period tolerances, the basic hours were uniform.

As the difficulties of reducing hours grew, enthusiasm for the "10-10" plan (ten percent reduction in hours and ten percent increase in hourly rates) declined. By the end of June 1934, the entire move was relegated to the background. The Labor Advisory Board tried to revive interest in the program of shorter hours, but could not capture the attention of the Administration. By this time, a Board had replaced the single Administrator. The January 1935 public hearings proved to be only a sounding board for the demand for shorter hours. Industry was

strongly adverse to the move.

The result of this growing coolness to the entire plan to reduce hours was that further reduction was restricted to industries in which organized labor was strong. Such was true in the bituminous coal, cotton garment and millinery industries. A concerted drive for reduction was made in a number of apparel industries which overlapped with the three basic codes but the reductions were not consumated. Conflict of provisions in overlapping codes provided opportunity for reopening codes to consider reduction in hours. However, the individual industry method encountered difficulties irrespective of the merits of the case. Most codes overlapped with directly contiguous and more remote industrial groups. Action on a single industry was complicated.

The results were reflected in the employment figures. Factory employment in 1934 and the first four months of 1935 varied only slightly. While the employment index considering the average 1923-1925 as 100, was 58.8 in March 1933, the employment index rose to 66.9 in June, and 80.0 in September 1933; the average for the last five months in 1933 was 77.3. During the year 1934 the range of employment index numbers was between 73.3 to 82.5, with an average of 78.8; while during the first five months of 1935, the range of employment index numbers was 78.8 to 82.6 and the average was 81.3. Employment did not increase proportionally with the volume of production. The initial momentum to reemployment was spent in liberal tolerances for seasonal and peak periods which frequently nullified the basic hour regulations.

The NRA showed possibilities of uniform reduction of basic hours. It illustrated the dangers to an accepted standard of too liberal tolerances and exemptions. It showed industrial resiliency and resourcefulness to meet problems presented by the reduction of hours.

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION

THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority, the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No. 18, Contents of Code Histories, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the codes, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, the materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
  Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
  Part B - Section 3 (e) of NIRA and its administration.
  Part C - Imports and Importing under NRA Codes.
  Part D - Exports and Exporting under NRA Codes.
Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for comparision with Trade Practice Provisions of NRA Codes.

Labor Studies

Cap and Cloth Hat Industry, Commission Report on Wage Differentials in
Earnings in Selected Manufacturing Industries, by States, 1933-35
Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-35
Fur Manufacturing, Commission Report on Wages and Hours in
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
  Part A. Introduction
  Part B. Control of Hours and Reemployment
  Part C. Control of Wages
  Part D. Control of Other Conditions of Employment
  Part E. Section 7(a) of the Recovery Act
Materials in the Field of Industrial Relations
PRA Census of Employment, June, October, 1933
Puerto Rico Needlework, Homeworkers Survey

Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approved Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their part in the Administration of the NIRA
  Part A. Introduction
  Part B. Nature, Composition and Organization of Code Authorities

Part C. Activities of the Code Authorities
Part D. Code Authority Finances
Part E. Summary and Evaluation
Code Compliance Activities of the NRA
Code Making Program of the NRA in the Territories, The
Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
Part A. Executive and Administrative Orders
Part B. Labor Provisions in the Codes
Part C. Trade Practice Provisions in the Codes
Part D. Administrative Provisions in the Codes
Part E. Agreements under Sections 4(a) and 7(b)
Part F. A Type Case: The Cotton Textile Code
Labels Under NRA, A Study of
Model Code and Model Provisions for Codes, Development of
National Recovery Administration, The: A Review of its Organization and Activities
NRA Insignia
President's Reemployment Agreement, The
President's Reemployment Agreement, Substitutions in Connection with the
Prison Labor Problem under NRA and the Prison Compact, The
Problems of Administration in the Overlapping of Code Definitions of Industries and Trades, Multiple Code Coverage, Classifying Individual Members of Industries and Trades
Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
Relationship of NRA with States and Municipalities
Sheltered Workshops Under NRA
Uncodified Industries: A Study of Factors Limiting the Code Making Program

Legal Studies

Anti-Trust Laws and Unfair Competition
Collective Bargaining Agreements, the Right of Individual Employees to Enforce
Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Regulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
Government Contract Provisions as a Means of Establishing Proper Economic Standards, Legal Memorandum on Possibility of
Industrial Relations in Australia, Regulation of
Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
Trade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

9768—4.

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of those studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
9768—5.

Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

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